TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 152.

JOHN LEECH, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED AUGUST 1, 1907.

(20,818.)

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INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from district court for the parish of Plaquemines	1	1
Information for piloting without a license	1	1
Motion to quash	2	2
Bill of exceptions to overruling of demurrer	4	3
Demurrer	5	4
Motion to quash from the minutes of the court	6	5
Bill of exceptions to overruling of motion to quash	8	6
License as pilot from Mississippi	8	6
Testimony and note of evidence taken in open court	9	7
Extracts from minutes of the court, April 8, 1907	11	8
Judgment of the court	13	9
Judgment from minutes of the court, April 8, 1907	15	10
Motion to arrest judgment on verdict	17	12
Extracts from minutes of the court, April 8, 1907	18	12
Notice of intention to apply for writ of prohibition and certiorari	19	13
Clerk's certificate	20	14
Petition for writ of certiorari and prohibition	22	15
Order endorsed on petition	25	17
Sheriff's return on writ	26	18
Motion for time to file briefs	27	19

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	Original.	Print.
Return of respondent judge	29	20
Called and appearance submitted (extracts from minutes)	30	20
Stipulation between counsel as to laws	30	21
Final judgment (extracts from minutes)	31	21
Opinion of the court	32	22
Petition for rehearing	40	27
Rehearing refused (extracts from minutes)	41	28
Petition for writ of error	42	29
Order granting writ of error	43	30
Assignment of errors	44	30
Copy of writ of error	46	31
Writ of error (original)	48	32
Bond on writ of error	50	33
Clerk's certificate	52	35
Chief justice's certificate	53	35
Citation and service	54	35

a UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

No. 16583.

JOHN LEECH, Plaintiff in Error,
versus
STATE OF LOUISIANA, Defendant in Error.

George H. Terriberry, for Plaintiff in Error.
Walter Guion, Attorney General, and James Wilkinson, District Attorney, for Defendant in Error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty days (30) from the second day of July, A. D. 1907.

Transcript of Record.

1 Twenty-ninth Judicial District Court of Louisiana.

THE STATE OF LOUISIANA,
Twenty-ninth Judicial District,
Parish of Plaquemines, ss:

James Wilkinson, District Attorney for the Twenty-Ninth Judicial District, State of Louisiana, who in the name of and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Twenty-Ninth Judicial District Court, in and for the Parish of Plaquemines, and gives the said Court here to understand, and be informed, that one John Leech late of the Parish of Plaquemines, on the 10th day of March, 1907 with force and arms in the Parish of Plaquemines aforesaid, and within the Jurisdiction of the Twenty-Ninth Judicial District Court, for the Parish of Plaquemines then and there not being a duly licensed, appointed and qualified Branch Pilot of the Port of New Orleans, State of Louisiana and having no right or authority to pilot any vessel inward or outward bound to or from the Port of New Orleans or over or through the duly established pilotage grounds at the mouths of the Mississippi River as established by the laws of this State, did knowingly go on board a certain foreign steam vessel called the Evona while said vessel was bound from the Gulf of Mexico to the City of New Orleans on, over and through said pilotage grounds so established at the mouths of the Mississippi River and on and through the South Pass at the mouth of said River, and did wilfully and wrongfully and without a Branch Pilot's license so to do as aforesaid, pilot said vessel in from the Gulf of Mexico through South Pass to the head of the Passes of aforesaid river, contrary to the form of the Statute of the State of Louisiana, in

such case made and provided, and against the dignity and peace of the same.

JAMES WILKINSON,
District Attorney, Twenty-ninth Judicial District.

2 (Endorsed:) Twenty-ninth Judicial District Court, Parish of Plaquemines. No. 567. The State of Louisiana *vs.* John Leech. Information for piloting without a license. Filed March 14, 1907. H. P. Alberti, Clerk of Court. Under R. S. Sec. —. James Wilkinson, District Attorney Twenty-ninth Judicial District.

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LOUISIANA
vs.
JOHN LEECH.

Now, in no wise waiving the benefit of the demurrer by him herein heretofore filed, comes defendant, John Leech, against whom, in the above entitled and numbered cause, an information has been filed charging that he did on March 10, 1907, act as pilot to a certain foreign steam vessel called the Evona, inward bound from the Gulf of Mexico to the port of New Orleans, he, the said Leech, not being then and there a duly licensed branch pilot, who moves that said information be quashed, for the following reasons, to-wit:

That, under and by virtue of par. 3, Sec. 8, Art. 1 of the Constitution of the United States, Congress has power to regulate commerce with foreign nations and among the several States, that, in pursuance of said power, Congress did, by Act approved March 2, 1837,

3 provide that it shall be lawful for the master of any vessel coming into or going out of any port situate upon waters which are the boundary between two States, to employ any pilot duly licensed or authorized by the laws of either of the States bounded on said waters, to pilot said vessel to or from said port; any law, usuage or custom to the contrary notwithstanding; that under the laws of the State of Mississippi, a State bounded upon waters upon which the port of New Orleans is situate, the Board of Harbor Commissioners of the Port of Natchez is duly authorized to issue licenses permitting the persons so licensed to act as pilots upon the waters of Natchez Harbor and all passes leading into the same, and to and from the sea; that on May 12, 1906, mover was duly licensed for a term of two years from said date to act as pilot upon all passes leading into Natchez Harbor, and to and from the sea; that now and at the date laid in the information mover is and was the holder of said license, and, as such, entitled to all the rights, privileges and immunities by said license conferred:

That any statute of the State of Louisiana that pretends to confer upon the officers of said State a power to prosecute persons acting as pilots, who have been licensed or authorized to act as pilots by such

States as are described by said Act of Congress is, to that extent, null, void and of no effect, being repugnant to said Act of Congress, adopted under said "Commerce Clauses" of the Constitution of the United States, and this Honorable Court is wholly without power, right or jurisdiction in such case to enforce said statute:

Wherefore, mover prays that this motion be sustained, that said information be quashed, and that he be hence dismissed without date.

JOHN LEECH.

4 Personally appeared before me, the undersigned authority, John Leech, who, being by me first duly sworn, deposes and says that all the allegations in above and within motion to quash are true.

JOHN LEECH.

Sworn to and subscribed before me this 8th day of April, 1907.

H. P. ALBERTI,
Clerk of 29th Jud. Dist. Court, Parish of Plaquemines.

(Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* John Leech. Demurrer. Filed April 8th, 1907. H. P. Alberti, Clerk of Court.

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LOUISIANA
vs.
JOHN LEECH.

Bill of Exceptions to Overruling of Demurrer.

Be it remembered, that defendant, John Leech, for the reasons therein set forth, filed a demurrer to the bill of information preferred against him by the district attorney, that for the reasons assigned by the Court over its signature to this bill, said demurrer was overruled; to which ruling of the court defendant excepts, making a part of this bill his said demurrer. And exceptor now tenders this bill, same having been first submitted to the district attorney, and
5 prays that the Court now sign same in open court.

N. H. NUNEZ, *Judge.*

Approved:
JAMES WILKINSON, *Dist. Att'y.*

(Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* John Leech. Bill of exception to over-ruling of Demurrer. Filed April 8, 1907. H. P. Alberti, Clerk of Court.

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LOUISIANA
vs.
JOHN LEECH.

And the said John Leech in his own proper person comes here into court, and, having heard the said information read, says that the said information and the matters therein contained are, as therein alleged and set forth, not sufficient in law to compel him the said John Leech, to answer thereto, for this to-wit:

That, whereas the port of New Orleans is situate upon waters which are the boundary between the State of Louisiana and the State of Mississippi, and whereas Congress, by virtue of its power to regulate commerce with foreign nations and among the several States has, by Act approved March 2, 1837, made it lawful for any pilot duly licensed or authorized by the laws of either of said States to pilot any vessel to or from said port, said information does not charge that said defendant when acting as pilot as aforesaid, was not licensed so to act under the laws of the State of Mississippi

6 and this he, the said John Leech is ready to verify. Wherefore he prays judgment, and that he be hence dismissed without day and be discharged of said information.

JOHN LEECH.

Personally appeared before me, the undersigned authority, John Leech, who being by me first duly sworn, deposes and says that all the allegations in above and within demurrer are true.

JOHN LEECH.

Sworn to and subscribed before me, this 8th day of April, 1907.

H. P. ALBERTI,
Clerk 29th Jud. Dist. Court, Parish of Plaquemines.

(Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* John Leech. Motion to quash. Filed April 8, 1907. H. P. Alberti, Clerk of Court.

29th Judicial Dist. Court, Parish of Plaquemines.

No. 567.

STATE OF LA.
vs.
JOHN LEECH.

Piloting Without a License.

Present: Hon. N. H. Nunez, Presiding Judge.

Extracts from the Minutes of the Court of April 8th, 1907.

And the said John Leech in his own proper person comes here into Court, and having heard the said information read, says that the said information and the matter therein contained are, as
7 therein alleged, and set forth, not sufficient in law to compel him the said John Leech, to answer thereto for this, to-wit: That whereas the port of New Orleans is situate upon waters which are the boundary between the State of Louisiana and the State of Mississippi, and whereas Congress, by virtue of its power to regulate commerce with foreign nations and among the several States, has by Act approved March 25, 1837, made it lawful for any pilot duly licensed or authorized by the laws of either of said States to pilot any vessel to or from said port, said information does not charge that said defendant, when acting as pilot aforesaid, was not licensed so to act under the laws of the State of Mississippi and this he, the said John Leech is ready to verify. Wherefore, he prays judgment, and that he be hence dismissed without day and be discharged of said information.

(Original signed) JOHN LEECH.

Personally appeared before me, the undersigned authority, John Leech, who being by me first duly sworn, deposes and says that all the allegations in above and *written* demurrer are true.

(Original signed) JOHN LEECH.

Sworn to and subscribed before me this 8th day of April, 1907.

(Original signed) H. P. ALBERTI,
Clerk 29th Judicial District Court,
Parish of Plaquemines.

(Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* John Leech. Piloting without a license. Motion to quash from the minutes of the Court.

8 29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LOUISIANA
vs.
JOHN LEECH.

Bill of Exceptions to Overruling of Motion to Quash.

Be it remembered, That John Leech, defendant, for the reasons therein set forth, filed a motion to quash the bill of information preferred against him by the District Attorney; that, for the reasons assigned by the Court, over its signature to this bill, said motion was overruled; to which ruling of the Court defendant excepts, making a part of this bill his said motion to quash, together with all the evidence and testimony adduced on the trial of said motion. And exceptor now tenders this bill, same having been first submitted to the District Attorney, and prays that the Court now sign same in open Court.

N. H. NUNEZ, *Judge.*

Approved:
JAMES WILKINSON, *Dist. Att'y.*

(Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* John Leech. Bill of Exception to overruling of Motion to Quash. Filed April 8, 1907. H. P. Alberti, Clerk of Court.

The State of Mississippi to Pilots:

This is to certify, That John Leech has given satisfactory evidence to the undersigned Board of Pilot Commissioners for the Harbor of Natchez that he is a skillful Pilot, and can be entrusted to
9 perform such duties upon the waters of Natchez Harbor and all passes leading into the same, and to and from the sea, and he is hereby licensed to act as Pilot for the term of two years from this date, on the above route.

Given under our hands, this 12th day of May, 1906.

W. H. BENBROOK,
Mayor, for Board of Pilot Commissioners,
City of Natchez, Miss.

Attest:
GEORGE T. EISELE,
Clerk Board of Pilot Commissioners.

(Endorsed:) Filed April 8, 1907. H. P. Alberti, Clerk of Court.

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LA.
vs.
JOHN LEECH.

Piloting Without a License.

Testimony and note of evidence taken in open court this 8th day of April, 1907, in the above entitled cause, before the Hon. N. H. Nunez, judge presiding.

Appearances.

James Wilkinson, District Attorney, representing the State, Geo. H. Terriberry and Robert H. Marr, Attorneys for defense.

After reading the motion to quash, the Counsel for the accused now produces and offers in evidence in support of his motion to quash, an excerpt from the Code of Mississippi of 1892 in reference to the pilotage laws of the State of Mississippi embraced in the Code of that State, of 1892, being Sections 2252 to Section 2266 included and which are admitted by both counsel for State and Counsel for accused to be correct copies of those laws, to which offer the District Attorney on the part of the State objects, that no evidence can be taken at this stage of the proceeding.

And the evidence sought to be offered envolves the merits of this case, and is a matter of defense upon the merits and cannot be properly heard upon a Motion to Quash.

By the COURT: Objection overruled.

It is agreed that the same objection, the same ruling and the same bill be reserved to the introduction of all further testimony in support of the motion to quash filed by the accused.

Counsel for accused also offers, introduces and files in evidence a license issued to John Leech by the Board of Pilot Commissioners for the Harbor of Natchez, dated May 12th, 1906, authorizing said John Leech to perform the duties of pilot upon the waters of Natchez Harbor and all passes leading into the same, and to and from the sea for the term of two years from said day.

Mr. JOHN LEECH being duly sworn deposes and says as follows:

Ques. Mr. Leech are you the same John Leech to whom this license was issued?

Ans. I am the same John Leech to whom this license was issued.

Ques. Mr. Leech, when you piloted the Evona up to New Orleans, were you the holder of this license?

Ans. I was.

Ques. Mr. Leech, did you pilot the Steamer Evona from outside of the bar at South Pass, from the sea, through South Pass, and up to

the head of the Passes, passed the bar pilots' station on the 10th day of March, 1907?

11 Ans. I did.

Ques. Was that vessel a foreign vessel coming from a foreign country and bound for the Port of New Orleans?

It is admitted by the accused, that this was a foreign vessel from a foreign port, bound to the port of New Orleans.

It is further admitted in open court, by the accused that the above facts were known to him at the time he boarded and piloted the said vessel as aforesaid. It is agreed that the evidence at use, on the motion to quash be used without other formal offer upon the trial of the merits.

(Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* John Leech. Testimony and Note of Evidence. Filed April 8th, 1907. H. P. Alberti, Clerk of Court.

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LA.
vs.
JOHN LEECH.

Piloting Without a License.

Present: Hon. N. H. Nunez, presiding Judge.

Extract from Minutes of the Court of April 8th, 1907.

In the case of State *vs.* John Leech for piloting without a license, fixed this day for trial, the accused appeared at the bar of the Court, accompanied by his counsel Messrs. Geo. H. Terriberry and Robert H. Marr and being arraigned on above charge, filed a general demurrer to the information herein filed, which demurrer

12 was taken up and argued forthwith by consent. James Wilkinson, Dist. Att'y, representing the State and aforesaid counsel the accused.

The Court thereafter in the presence of the accused and counsel over-ruled the demurrer.

Whereupon said counsel for the accused reserved a bill of exceptions to the ruling of the Court and filed a motion to quash the information herein and took evidence in support of said motion.

When after full argument, said motion to quash was over-ruled by the Court, the Court, stating it would file written reasons in support of its ruling at a later date, to which ruling counsel for the accused reserved a bill of exceptions. The accused was then arraigned in open court, on above charge, and did plead not guilty, and by consent of counsel, the case was forthwith tried. When

after hearing evidence and the argument of counsel the law and evidence submitted and filed being in favor of the State of Louisiana and against the accused the Court pronounced a verdict and judgment of guilty against the accused of the offense charged, and set forth in the information filed herein.

Whereupon counsel for the accused filed a motion in arrest of Judgment, which was submitted and over-ruled by the Court, and a bill of exceptions reserved to said ruling by counsel for the accused, and the accused was released on his bond herein until notified to appear for sentence of the Court, whereupon counsel for the accused then and there in open court notified the Hon. N. H. Nunez, Judge of this Court, in writing, that it was the intention of the accused to apply forthwith to the Supreme Court f othis State, for writs of prohibition and certiorari herein to review the proceedings of this court in this cause.

(Endorsed:) No. 567. 29th Judicial District Court, Parish
13 of Plaquemines. State of La. *vs.* John Leech. Piloting without a license. Trial from the minutes of the Court.

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LOUISIANA
vs.
JOHN LEECH.

Judgment.

As to the demurrer claiming the information to be vague and not sufficient to allow the accused to plead thereto, for the reason that it does not charge that he has violated both the Mississippi and Louisiana Statutes, I can not see how one could be charged in and by one State, with the violation of the laws of another State. The fact that one's authority for his acts is derived from another State may be used in his defense on the merits, but no state can charge one with the violations of the Statutes of any other State. The demurrer is therefore over-ruled.

As to the motion to quash, in which the accused contends that holding a Pilot's License from the State of Mississippi, *that* he is exempt from the Criminal Statutes of the State of Louisiana, it is well settled that while the United States Government has the power to pass exclusive laws in regards to the pilotage of both coastwise and foreign vessels coming to the sea coast ports of the United States; still, as to vessels coming from foreign ports, Congress has seen fit to leave it to the respective states, as to the pilotage in their own waters, and in cases where the waters are the boundary between two or more states, to allow pilots of either states to pilot in those waters.

No waters could be any more within a State than the
14 Mouth of the Mississippi River, and it can not be that because the river then extends further north and forms the boundary line of the State of Mississippi and other states, that the City of Natchez is authorized to license pilots for the Port of New Orleans. If such was the case, the City of Minneapolis could do likewise, which certainly could not have been the intention of Congress.

The Clymene Case (9th Federal R. 164) relied on by the attorneys for the accused, is not in my mind, at all similar to this case; on the contrary, it is the very opposite. In the Clymene Case, the Delaware Bay and River, from Philadelphia to the sea, being every inch of it the boundary of New Jersey and Delaware, and Pennsylvania, is governed by the statutes of Congress of 1837. While in this case, the waters of the Mississippi River from the mouth of the River to New Orleans being strictly and entirely within the State of Louisiana, *and is* governed by the Acts of Congress of 1789. (Now Sec. 4235, U. S.)

Moreover, even if Mississippi and Louisiana were situated as to the Mississippi River as Washington and Oregon are situated as to the Columbia River, and that Mississippi had the right to license pilots in and out of the Bar leading to the Sea, the right has never been exercised by the Legislature of Mississippi, and therefore, the issuance of the license to the accused by the City of Natchez is *ultra vires*.

The motion to quash is overruled and as the evidence proves that the accused has violated the Louisiana Piloting Laws, I find him guilty as charged.

Plaquemines Parish, La., April 8, 1907.

N. H. NUNEZ,
Judge 29th Judicial District, State of Louisiana.

15 (Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* John Leech. Judgment. Filed April 8, 1907. H. P. Alberti, Clerk of Court.

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LA.
vs.
JOHN LEECH.

Piloting Without a License.

Present: Hon. N. H. Nunez, Presiding Judge.

Extracts from Minutes of the Court of April 8th, 1907.

Judgment.

As to the demurrer claiming the information to be vague and not sufficient to allow the accused to plead thereto, for the reason that it

does not charge that he has violated both the Mississippi and Louisiana Statutes, I can not see how one could be charged in and by one State, with the violation of the laws of another State.

The fact that one's authority for his acts is derived from another state, may be used in his defense, on the merits, but no state can charge one with the violation of the Statutes of any other State.

The demurrer is therefore overruled. As to the motion to quash in which the accused contends that holding a Pilot's License from the State of Mississippi, *that* he is exempt from the criminal statutes of the State of Louisiana, it is well settled that while the United States Government has the power to pass exclusive laws in regards to the pilotage of both coastwise and foreign vessel- coming
16 to the sea coast ports, Congress has seen fit to leave it to the respective states, as to the pilotage in their own waters and in case where the waters are the boundary between two or more states, to allow pilots of either states to pilot in those waters.

No waters could be any more within a state, than the mouth of the Mississippi River, and it cannot be that because the river then extends further north and forms the boundary line of the State of Mississippi and other States, that the City of Natchez is authorized to license pilots for the port of New Orleans.

If such was the case, the City of Minneapolis could do likewise, which certainly could not have been the intention of Congress. The Clymene Case (9th Federal R. 164) relied on by the attorneys for the accused is not in my mind, at all similar to thi*a* case, on the contrary, it is the very opposite. In the Clymene Case, the Delaware Bay and River from Philadelphia to the sea, being every inch of it, the boundary of New Jersey and Delaware and Pennsylvania, is governed by the Statutes of Congress of 1837. While in this case, the waters of the Mississippi River, from the mouth of the river to New Orleans, being strictly and entirely within the State of Louisiana, *and is* governed by the Act*o* of Congress of 1789 (now Sec. 4235 U. S.)

Moreover, even if Mississippi and Louisiana were situated as to the Mississippi River as Washington and Oregon are situated as to the Columbia River and that Mississippi had the right to license pilots in and out of the bar leading to the sea, the right*s* has never been exercised by the Legislature of Mississippi, and therefore, the issuance of the License to the accused by the City of Natchez is *ultra vires.*

The motion to quash is over-ruled and as the evidence proves that the accused has violated the Louisiana Piloting Laws, I find him guilty as charged.

Plaquemines Parish, La.

17 (Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* Leech. Piloting without a license. Judgment from the minutes of the Court. April 8th, 1907. Original signed, N. H. Nunez, Judge 29th Judicial District, State of Louisiana.

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LOUISIANA
vs.
JOHN LEECH.

On motion of Geo. H. Terriberry and Robert H. Marr, of counsel for defendant and on suggesting to the Court that said defendant has been found guilty on the information herein against him filed, and on suggesting further that said information and the matter therein contained, as therein alleged and set forth, are not sufficient in law to compel him to answer thereto, for this, to-wit:

That, where as the port of New Orleans is situate upon waters which are the boundary between the State of Louisiana and the State of Mississippi, and whereas Congress, by virtue of its power to regulate commerce with foreign nations and among the several states, has, by Act approved March 2, 1837, made it lawful for any pilot duly licensed or authorized by the laws of either of said States to pilot any vessel to or from said port, said information does not charge that said defendant, when acting as pilot as aforesaid, was not licensed so to act under the laws of the State of Mississippi;

and for the reasons alleged in the motion to quash.

18 It is ordered by the Court that judgment on the verdict herein heretobefore rendered be arrested and accordingly that accused be discharged without date.

(Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* John Leech. Motion in arrest of Judgment on verdict. Filed April 8, 1907. H. P. Alberti, Clerk of Court.

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LA.
vs.
JOHN LEECH.

Piloting Without a License.

Present: Hon. N. H. Nunez, presiding judge.

Extracts from Minutes of the Court of April 8th, 1907.

On motion of Geo. H. Terriberry and Robert H. Marr of counsel for defendant and on suggesting to the Court that said defendant has been found guilty on the information herein against him filed, and on suggesting further that said information and the matter therein

contained, as therein alleged, and set forth, are not sufficient in law to compel him to answer thereto for this, to-wit:—

That, whereas the port of New Orleans is situated upon waters which are the boundary between the State of Louisiana and the State of Mississippi and whereas Congress by virtue of its power to regulate commerce, with foreign nations and among the several states, has be Act approved March 2, 1837, made it lawful for any — duly licensed or authorized by the laws of either of said States to
19 pilot any vessel to or from said port, said information does not charge that said defendant, when acting as pilot as aforesaid was not licensed so as to act under the laws of the State of Mississippi and for the reasons alleged in the motion to quash.

It is ordered by the Court that judgment on the verdict herein heretofore rendered be arrested and accordingly that accused be discharged without date.

(Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* John Leech. Piloting without a license. Motion in arrest of Judgment on verdict, from the minutes of the Court.

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LOUISIANA
vs.
JOHN LEECH.

Notice is hereby given of the intention of John Leech to apply to the Supreme Court for writs of prohibition and certiorari.

GEO. H. TERRIBERRY AND
ROBERT H. MARR,
Of Counsel for Defendant.

N. H. NUNEZ, *Judge.*

(Endorsed:) No. 567. 29th Judicial District Court. State of La. *vs.* John Leech. Notice of intention to apply for writs of prohibition and certiorari. Filed April 8, 1907. H. P. Alberti, Clerk of Court. Geo. H. Terriberry, R. H. Marr, Att'ys for Defendant.

20 STATE OF LOUISIANA,
29th Judicial District Court,
Parish of Plaquemines.

Inventory of Papers, Pleadings, and Proceedings in the Case of The State of Louisiana *vs.* John Leech, Piloting Without a License. No. 567 of the Docket of Aforesaid Court.

Information..... 1
Demurrer..... 2
Bill of Exception to Demurrer..... 3
Motion to quash (original)..... 4
Motion to quash (from minutes of Court)..... 5
Bill of Exception to overruling of motion to quash..... 6
License of John Leech..... 7
Testimony and Note of Evidence..... 8
Trial from minutes of the Court..... 9
Judgment (original).. 10
Judgment (from Minutes of the Court)..... 11
Motion in arrest of Judgment on verdict (original)..... 12
Motion in arrest of Judgment on verdict, (from minutes of the Court)..... 13
Notice of intention to apply for writs of prohibition and certiorari. 14

I, the undersigned, do hereby certify that the above and foregoing as a true and correct inventory of the record of pleading- and proceedings had and evidence produced and filed in the above entitled and numbered cause.

21 In faith whereof, I have hereunto set my hand and affixed the seal of the Clerk's Office at Pointe a la Hache, La., this 18th day of April, A. D. 1907.

H. P. ALBERTI,
Clerk of 29th Judicial District Court
for the Parish of Plaquemines.

(Endorsed:) No. 567. 29th Judicial District Court, Parish of Plaquemines. State of La. *vs.* John Leech. Piloting without a license. Inventory of papers, pleadings, proceedings and evidence.

PROCEEDING HAD IN THE SUPREME COURT OF THE STATE OF LOUISIANA.

22 *Petition for Certiorari and Prohibition and Order.*

29th Judicial District Court, Parish of Plaquemines.

No. 567.

STATE OF LOUISIANA
vs.
JOHN LEECH.

To the Honorable the Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana, on the relation of John Leech, a resident of the City of New Orleans, State of Louisiana with respect represents:

That there is now pending in the 29th Judicial District Court for the parish of Plaquemines an information charging that he, the said Leech, on March 10, 1907, then and there not being a duly licensed, appointed, and qualified branch pilot for the Port of New Orleans, did pilot from the Gulf of Mexico, through the South Pass of the Mississippi River a certain foreign vessel called the Evona, bound from the Gulf of Mexico to the port of New Orleans, said information being filed in the suit entitled the State of Louisiana *versus* John Leech, and bearing the number 567 of the docket of said District Court. Now relator shows, that to said information he filed a demurrer, setting up that said information is fatally defective, and that he cannot be legally made to plead thereto, for the following reasons, to-wit: That, whereas, the Port of New Orleans is situate upon waters which are the boundary between the State of Louisiana and the State of Mississippi, and whereas Congress, by virtue of its power to regulate commerce with foreign nations and among the several states has, by act approved March 2, 1837, made it lawful for any pilot duly licensed and authorized by the laws of either of said States to pilot and vessel to or from said port, said information does not charge that said defendant, when acting as pilot as aforesaid, was not licensed so to act under the laws of the State of Mississippi.

That said demurrer having been overruled, and defendant having excepted to said ruling and taken a bill of exceptions thereto,
23 he thereupon filed a motion to quash said information on the following grounds, to-wit: That, under and by virtue of Par. 3, Sec. 8, Art. 1 of the Constitution of the United States, Congress has power to regulate commerce with foreign nations and among the several states; that, in pursuance of said power, Congress did, by Act approved March 2, 1837, provide that it shall be lawful for the master of any vessel coming into or going out of any port situate upon waters which are the boundary between two States, to employ any pilot duly licensed or authorized by the laws of either of the

States bounded on said waters, to pilot said vessel to or from said port; any law, usage, or custom to the contrary notwithstanding; that under the laws of the State of Mississippi, a State bounded upon waters upon which the port of New Orleans is situate, the Board of Harbor Commissioners of the port of Natchez is duly authorized to issue licenses permitting the persons so licensed to act as pilots upon the waters of Natchez Harbor and all passes leading into the same, and to and from the sea: that on May 12, 1906, relator was duly licensed for a term of two years from said date to act as pilot upon all passes leading into Natchez Harbor, and to and from the sea; that now and at the date laid in the information relator is and was the holder of said license, and, as such holder, entitled to all the rights, privileges and immunities by said license conferred; that any Statute of the State of Louisiana that pretends to confer upon the officers of said State a power to prosecute persons acting as pilots, who have been licensed or authorized to act as pilots by such States as are described by said Act of Congress is, to that extent, null, void, and of no effect, being repugnant to said Act of Congress adopted under said "Commerce Clause" of the Constitution of the United States, and that said Court is wholly without power, right or jurisdiction in such case to enforce said statute.

Now relator further shows that said motion to quash having been overruled, and a bill of exceptions to that ruling reserved, the Honorable Nemours H. Nunez, Judge of said District Court did on April 8, 1907, proceed with the trial of relator and found relator
24 guilty under said illegal and insufficient information, and notwithstanding the immunity from such prosecution conferred upon relator by said Act of Congress, adopted by virtue of the power vested in it by said "Commerce Clause" of the Constitution of the United States.

Now relator shows that the Court having thus found him guilty, he filed a motion in arrest of judgment upon the grounds set up in his said demurrer and motion to quash, that said motion in arrest of judgment having been overruled, said Judge will proceed to sentence relator unless restrained therefrom by the order of this Honorable Court.

Relator further shows that the information against him filed is based upon the provisions of Sec. 2, Art. 63 of the Extra Session of 1877 p. 103; that the penalty under said Act is a fine not exceeding one hundred dollars, or an imprisonment not exceeding two months, or both at the discretion of the court, and that relator is, therefoore, without other remedy than that afforded by the writs of certiorari and prohibition.

Relator further shows that he has notified the Honorable Nemours H. Nunez, Judge of said District Court, of his intention to apply to Your Honors for the issuance of said writs.

Wherefore, these allegations and the annexed affidavit considered, relator prays that writs of certiorari and prohibition issue out of this Honorable Court directed to the Honorable Nemours H. Nunez, Judge of the 29th Judicial District Court, in and for the parish of Plaquemines, commanding said Judge to send to this Honorable

Court a certified copy of all the proceedings had in the case of the State of Louisiana *vs.* John Leech, and bearing the number 567 of the docket of said Court, to the end that their validity may be ascertained; that said Judge be forbidden to proceed further in said cause; that after due proceedings had, said demurrer, said motion to quash and said motion in arrest of judgment be sustained; that the writs herein prayed for be made peremptory, and that
25 said Judge be forever prohibited and enjoined from proceeding further in said above entitled and numbered cause.

Relator further prays for all further necessary and equitable orders in the premises.

(Signed) GEO. H. TERRIBERRY,
do. ROBERT H. MARR,
[SEAL.] *Attorneys for Relator.*

Personally appeared before me, the undersigned authority, John Leech, who, being first duly sworn, deposes and says that all the allegations in within and foregoing petition for certiorari and prohibition are true.

(Signed) JOHN LEECH.

Sworn to and subscribed before me this 9th day of April, 1907.

(Signed) J. KENTON BAILEY,
Notary Public.

Order Endorsed on Petition.

The within petition having been read and considered, it is ordered that the respondent Judge forward to this Court the record of the proceedings had before him in the case of the State of Louisiana *vs.* John Leech, No. 567 on the docket of the twenty ninth Judicial district court in and for the Parish of Plaquemines, to the end that their validity may be inquired into and ascertained. The respondent Judge is also commanded to shew cause on Saturday, the 20th day of April, A. D. 1907, at 11 o'clock A. M., before this Court at the city of New Orleans, why the writ of prohibition should not issue as prayed and in the meantime and until the further orders of this court let all proceedings in said cause be stayed. And let the district attorney of said district be notified hereof by the clerk of this Court.

Done and signed at Chambers, at the city of New Orleans, this 10th day of April, A. D. 1907.

(Signed) JOS. A. BREAUX,
Chief Justice.

26 (Endorsed:) No. 16583. Supreme Court of Louisiana. State of Louisiana *vs.* John Leech. *In re* John Leech applying for writs of certiorari and prohibition. Filed April 9th, 1907. (Signed) Paul E. Mortimer, Dep. Clerk.

Sheriff's Return on Writ.

Supreme Court of the State of Louisiana.

No. 16583.

STATE OF LOUISIANA
vs.
JOHN LEECH.

In re John Leech Applying for Writs of Certiorari and Prohibition.

To the Honorable Nemours H. Nunez, Judge of the 29th Judicial District Court in and for the parish of Plaquemines, Greeting:

Whereas John Leech has filed a petition in this Honorable Court, praying for writs of certiorari and prohibition against you in the case entitled State of Louisiana *versus* John Leech, and numbered 567 on the docket of the twenty-ninth judicial district court for the parish of Plaquemines, and the court having ordered said writ to issue.

Now, therefore, you are hereby commanded in the name of the State of Louisiana, and of this Honorable Court to forward to this Court the record of the proceedings had before you in the above numbered and entitled cause to the end that their validity may be inquired into and ascertained.

You are further commanded to show cause, on Saturday, the 20th day of April, A. D. 1907, at 11 o'clock A. M., before this Court, at the city of New Orleans, why the writ of prohibition should not issue, as prayed for by relator in his petition a certified copy
27 of which is hereto annexed.

And in the meantime and until the further orders of this Court let all proceedings in said cause be stayed.

Witness the Honorable Joseph A. Breaux, Chief Justice of this Honorable Court, on this the tenth day of April, in the year of our Lord, one thousand nine hundred and seven.

[SEAL.] (Signed) T. McC. HYMAN, *Clerk.*

(Endorsed:) No. 16583. Supreme Court of the State of Louisiana. State of Louisiana *vs.* John Leech. *In re* John Leech applying for writs of certiorari and prohibition. No. 567. Writs of certiorari and prohibition, and copy of petition inside to be served on Honorable Nemours H. Nunez, Judge of the 29th Judicial District, in and for the parish of Plaquemines. For return. Received on the 13th day of April 1907, and on same day month and year, Served a copy of the within writ of Certiorari and prohibition and accompanying Petition on Nemours H. Nunez Judge of the 29th Judicial District Court in and for the Parish of Plaquemines. In person. Returned April 15th, 1907. (Signed) E. E. Nunez, Sheriff Parish of St. Bernard. Sheriff Fee, $2.00. Filed April 15, 1907. (Signed) Paul E. Mortimer, Dep. Clerk.

Motion for Time to File Briefs.

Supreme Court of Louisiana.

No. 16583.

STATE OF LOUISIANA
vs.
JOHN LEECH.

In re John Leech Applying for a Writ of Certiorari and Prohibition.

28 To the Honorable the Judges of the Supreme Court of Louisiana:

The petition of N. H. Nunez, Judge of the 29th Judicial District Court, Parish of Plaquemines and the State of Louisiana, both represented by the undersigned District Attorney, with respect represents.

That they were served with copies of relator's petition on Saturday, April 13th, 1907.

That they have instructed and requested the Clerk of the Court of Plaquemines Parish to for-with prepare and send up to this Court the record as ordered by the Court, but that owing to the fact that both the respondent Judge and District Attorney have been actively engaged in the trial of State cases in St. Bernard Parish, during the past few days, that it will be impossible to prepare and then file in a case of this magnitude and importance a proper brief of the law and the authorities relating thereto.

That your respondent District Attorney called this week at the Attorney General's office in this City to enlist his aid herein, but said Attorney General was absent at Baton Rouge and petitioner was requested by the Assistant Attorney General to prepare and conduct said cause himself.

That your respondents desire and it is necessary for them to have a delay of two weeks from Saturday, April 20th, 1907, to prepare and file a proper brief in behalf of the respondent Judge and the State of Louisiana herein.

Wherefore, respondents pray, that they be given two weeks additional time from Saturday, April 20th, to prepare and file a brief herein.

And for equitable relief.

(Signed) JAMES WILKINSON,
District Attorney, 29th Judicial District Court of Louisiana, Representing the Respondent Judge and the State of Louisiana.

29 (Endorsed:) No. 16,583. Supreme Court of Louisiana. State of Louisiana *vs.* John Leech. *In re* John Leech applying for Writs of Certiorari and Prohibition. Filed Ap'l 16, 1907. (Signed) Paul E. Mortimer, Dep. Clerk.

Return of Respondent Judge.

Supreme Court of the State of Louisiana.

No. 16583.

STATE OF LOUISIANA
vs.
JOHN LEECH.

In re John Leech Applying for a Writ of Certiorari and Prohibition.

Now into this Honorable Court, comes Nemours H. Nunez, Judge of the 29th Judicial District Court, and the State of Louisiana, respondents in the above entitled cause, and produces and files herewith the record of the State of Louisiana *vs.* John Leech, as required by the orders of this Court.

Your respondents aver that the decision of the Lower Court therein is correct, and that this Court should refuse the relief prayed for by the relator, or affirm the judgment herein rendered by said Lower Court.

Wherefore, your respondents pray, that said writs of certiorari and prohibition be refused or that the judgment of the Lower Court should be affirmed with costs.

And for general relief.

(Signed) JAMES WILKINSON,
District Attorney, 29th Jud. Dist. La.

(Endorsed:) No. 16,583. Supreme Court of Louisiana. State of Louisiana *vs.* John Leech. *In re* John Leech applying for Writs of Certiorari and Prohibition. Return of Respondent. Filed Ap'l 20th, 1907. (Signed) Paul E. Mortimer, Dep. Clerk.

30 *Called and Appearance Submitted.*

(Extracts from Minutes.)

NEW ORLEANS, SATURDAY, *April* 20, 1907.

The Court was duly opened pursuant to adjournment.

Present: Their Honors: Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 16583.

STATE OF LOUISIANA
vs.
JOHN LEECH.

In re John Leech Applying for Writs of Certiorari and Prohibition.

This cause came on this day to be heard and was submitted to the Court by counsel for the parties in interest upon the papers now on file.

Stipulation Between Counsel.

Supreme Court, State of Louisiana.

No. 16583.

THE STATE OF LOUISIANA
vs.
JOHN LEECH.

Stipulation.

Whereas, on the trial of the above entitled case in the District Court, the accused offered, produced, and filed in evidence Chapter 59 of the Annotated Code of Mississippi, of the year 1892, embracing Section- 2252 to 2266, both inclusive, and

Whereas, the Clerk of the District Court, through error, has neglected to send up to this Court said laws as part of these proceedings,

Now, therefore, it is hereby agreed by and between James Wilkinson, Esq., District Attorney, and Geo. H. Terriberry, attorney for the accused, relator, that the Court shall use the said Code of Mississippi, or Chapter 59 thereof, together with the amend-
31 ments thereto made by the legislature of Mississippi, in the year 1896, being Chapter 128, page 149 of the acts of that year; and it is furthermore agreed that said laws, on the subject of pilotage, that existed or were in force in May, 1906, are in evidence in this case, and the book- themselves shall be used by the Court, as being a part of the record hereof.

New Orleans, La., April 23, 1907.

(Signed) JAMES WILKINSON,
District Attorney, for Respondent.

(Signed) GEO. H. TERRIBERRY,
Attorney for Relator.

(Endorsed:) No. 16,583. Supreme Court of Louisiana. State of Louisiana *vs.* John Leech. Stipulation. Filed Ap'l 24, 1907. (Signed) Paul E. Mortimer, Dep. Clerk.

Final Judgment.

(Extracts from Minut-s.)

NEW ORLEANS, MONDAY, *May 27th*, 1907.

The Court was duly opened pursuant to adjournment.

Present: Their Honors: Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

His Honor Mr. Justice Monroe Pronounced the opinion and judgment of the Court in the following case:

No. 16583.

STATE OF LOUISIANA
vs.
JOHN LEECH.

In re John Leech Applying for Writs of Certiorari and Prohibition.

It is therefore ordered, adjudged and decreed that the restraining order herein made be rescinded, that the writ of prohibition prayed for by relator be denied and that this proceeding be dismissed at relator's cost.

32 *Opinion.*

Monday, May 27th, 1907.

No. 16583.

STATE OF LOUISIANA
vs.
JOHN LEECH.

In re John Leech Applying for Writs of Certiorari and Prohibition.

MONROE, *J.:*

Relator complains that he was prosecuted under section 2 of Act 63, of 1877, Extra Session, in the district court for the parish of Plaquemines, by an information, charging that, not being a duly licensed, appointed and qualified branch pilot for the port of New Orleans, he had piloted a certain foreign vessel from the Gulf of Mexico through the South Pass of the Mississippi River; and that, by way of demurrer, motion to quash and motion in arrest of judgment, he set up the following defense, to-wit: that, under Article 1 of the Constitution of the United States, Congress has power to regulate commerce with foreign nations and among the several States; that, in the exercise of that power, Congress enacted the law approved March 2, 1837, which provides that it shall be lawful for the master of any vessel, coming into, or going out of, any port situate upon waters which are the boundary between two States, to employ a pilot, duly licensed or authorized by the laws of either of the States bounded by such waters, to pilot such vessel, to, or from, such port, any law, usage or custom, to the contrary, notwithstanding; that, under laws of the State of Mississippi, which is bounded by waters upon which the port of New Orleans is situated, the Board of Harbor Commissioners of the port of Natchez is authorized to issue licenses permitting persons to act as pilots upon the waters of Natchez harbor and of all passes leading thereto and leading to and from the sea, and that, at the date laid in the information against him, and now, relator held, and holds, such license, and was, and is, entitled to all the rights thereby
33 conferred, and that any Statute of the State of Louisiana which pretends to confer upon the officers of the state power

to prosecute persons acting as pilots who have been authorized so to act by such state as are described in the act of Congress aforementioned, is, to that extent, void, as repugnant to said act, and that said court is without right or jurisdiction to enforce such statute. The demurrer (which sets up that the information is defective, in failing to charge that relator, when acting as pilot, was not licensed by the laws of Mississippi), the motion to quash, and the motion in arrest, having been overruled, and relator having been found guilty, as charged, and having no right of appeal, he has made this application (invoking the supervisory jurisdiction of this court) for writs of *certiorari* and prohibition.

Opinion.

It is well settled that the States, upon entering the Union (including not only the original members but those which have entered since), retained ownership of, and sovereignty over, the lands lying under the navigable waters within their respective limits, and it was at one time supposed (by some persons) that the same rights were retained with respect to the waters. The Supreme Court of the United States, however, held, as soon as the question was presented to it, that the power to regulate commerce, which is conferred by the Constitution on Congress, "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed by the Constitution," and, that, to the extent necessary for such full and complete exercise, it includes jurisdiction over the avenues and vehicles of commerce, and, hence, extends to the navigable waters of the country, irrespective of State lines. Apart from the limitations so established and recognized, the waters lying within the limits of a State are as much subject to its exclusive dominion as the land. It is, therefore as inconceivable that one State should undertake to regulate the use of the waterways of another as that it should assume to regulate the highways by land,
and it is equally inconceivable that Congress should assume
34 to vest in one State, with respect to another, a power which, though possessing, it has never, itself seen fit to exercise. The first Congress enacted a law (Act of Aug. 7, 1789) declaring: "That all pilots in the bars, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with existing laws of the States, respectively, wherein such pilots may be, or with such laws as the States may, respectively, hereafter, adopt for the purpose, until further legislative provision shall be made by Congress."

Referring to this law, Marshall, C. J., (in a case to which we have already alluded) said: "When the Government of the Union was brought into existence, it found a system for the regulation of its pilots in full force in every State. The act which has been mentioned adopts this system and gives it the same validity as if its provisions had been specially made by Congress." Gibbons *vs.* Ogden, 9 Wheat. 1. And, again, it has been said: "The act of 1789 contains a clear and authoritative declaration by the first Congress, that the nature of this subject is such that, until Congress should

find it necessary to exert its power, it should be left to the legislation of the States; that it is local and not national; and that it is likely to be the best provided for, not by one system or plan of regulations, but by many, as the legislative discretion of the State should deem applicable to the local peculiarities of the ports within their limits."

Cooley *vs.* Board of Wardens of the Port of Philadelphia, 12 How. 319.

In the course of a few years, however, it was found that troubles were arising from, and the interests of commerce were being prejudicially affected by, conflicting claims to jurisdiction, asserted by States over navigable waters constituting the boundaries between them. Thus, New York Harbor and Hudson River lie between the states of New York and New Jersey; Delaware Bay and the Delaware R. r lie between New Jersey and Delaware; the Delaware River lies between New Jersey and Pennsylvania, and those States were each asserting the right to regulate pilotage on the waters common to both, and, at times, denying that right to the other. Congress, accordingly, not from any desire to exercise, or to
35 delegate, its authority, but, from necessity, interposed and enacted a law (Act of March 2, 1837) which reads: "That it shall be, and may be, lawful for the master or commander of any vessel coming into or going out of any port situate upon waters which are the boundary between two States, to employ any pilot, duly licensed or authorized by the laws of either of the States bounded on the waters, to pilot said vessel to or from said port; any law, usage, or custom, to the contrary, notwithstanding."

The specific charge against relator is, that he "not being a duly licensed, appointed and qualified branch pilot of the port of New Orleans, State of Louisiana, and having no right or authority to pilot any vessel inward or outward bound to or from the port of New Orleans or through the duly established pilotage grounds at the mouth of the Mississippi as established by the laws of the State, did, knowingly, go on board a certain foreign steam vessel, called the Evona, while the said vessel was bound from the Gulf of Mexico to the City of New Orleans, on, over and through said pilotage grounds so established at the mouth of the Mississippi River, and on and through the South Pass, at the mouth of said River, and did, wilfully and wrongfully and without a branch pilot's license, so — do, as aforesaid, pilot said vessel in from the Gulf of Mexico through such pass to the head of the passes of aforesaid river, contrary to the form of the Statutes of the State of Louisiana," &c.

The Statute under which the charge is made is Act 63 of 1877, Extra Session, Sec. 2, which reads: "That whoever shall be guilty of acting or attempting to act as pilot to any vessel, inward or outward bound to and from the port of New Orleans, who is not a duly licensed branch pilot, shall suffer fine not exceeding $100, or imprisonment, not exceeding two months, or both, at the discretion of the Court." It is clear, that the information charges an offense within the meaning of the Statute, and we think it equally clear that the matter is, in no wise, affected by the act of Congress of

1837, above quoted; since, whilst that Act provides that either of two States having a water boundary "between" them, may license persons to pilot vessels to and from "any port situate" thereon;

36 *i. e.*, on the "waters which are the boundary between (the) two States," the waters of the Mississippi river, at South Pass, thence to New Orleans, and, thence, to the Mississippi State line, lie, wholly, within the State of Louisiana, and are no more the boundary "between" Louisiana and Mississippi then between Louisiana and any other State which the Mississippi river, or any of its tributaries, may pass through, or touch, on their way to the Gulf of Mexico.

This, we understand to have been the construction placed upon the law in the case of "The Glencarne," 7 Fed. R. 604, in which it was held that a pilot, licensed under the law of Washington Territory to operate on the Columbia river (lying between that territory and Oregon), had no right to pilot a vessel through the Willamette river (a tributary of the Columbia, lying wholly within the State of Oregon), a distance of twelve miles to Portland, Oregon. It is true that, in the case of "The Clymene," 9 Fed. R. 164 & 12 Fed. R. 346, it was held that a Delaware pilot was authorized to pilot a vessel through Delaware Bay and River, to Philadelphia, but, in comparing that case with this, it will be noted that the Delaware pilot boarded, in waters constituting the boundary between Delaware and New Jersey, a vessel, bound (through those waters and through waters constituting the boundary between Pennsylvania and New Jersey), upon an interstate voyage, whereas, in the instant case, the relator boarded, in Louisiana waters, a vessel bound, through Louisiana waters, to a Louisiana port. Again, the case of "The Clymene" was a suit for compensation for services rendered, whereas the case before us is a prosecution by the State of Louisiana for an alleged violation of a State law. And, still again, we venture to think that a broader interpretation has been placed upon the Act of 1837, in "The Clymene" case than is warranted by the Act, or by the attitude of the General Government, since its organization, or by the jurisprudence of the Supreme Court of the United States in relation to the subject matter. In 1852, Congress passed a law containing various provisions in regard to fire, pumps, boats, life preservers, the carriage and storage of dangerous articles &c.,

37 and also, providing for the appointment of two inspectors, one of whom was to possess a practical knowledge of ship building and the uses of steam, in navigtaion, and the other to possess knowledge of, and experience in, the duties of an engineer of steam vessels and of the construction and use of boilers and machinery and appurtenances connected with them; and the two were required to make an examination of the hulls of vessels, to inspect and test the boilers and machinery, and to require licenses to be obtained before dangerous articles could be taken aboard. There were also some provisions in the act relating to pilots, and it was contended (in the case from the report of which we obtain the foregoing information) that the act conflicted with, and controlled, the pilotage law enacted by the State of California in 1861. In consid-

ering the question, however, the Supreme Court of the United States said:

"The Act" (referring to the Act of Congress) "contains few provisions relating to pilots; indeed, it was not directed to the remedy of any evil of the local pilot system. There were no complaints against the port pilots; on the contrary, they were the subjects of just praise for their skill, energy and efficiency. * * * The term 'Pilots' is equally applicable to two classes of persons—to those whose employment is to guide vessels in and out of ports, and to those who are entrusted with the management of the helm and the direction of the vessel on her voyage. To the first class, for the proper performance of their duties, a thorough knowledge of the port in which they are employed is essential, with its channel, currents and tides, and its bars, shoals and rocks, and the various fluctuations and changes to which it is subject. To the second class, knowledge of entirely different character is necessary. Yet the act in question does not require the inspectors, who are to license pilots under its provisions to possess any knowledge of the harbors for which, under the theory of the plaintiff in error, pilots are to be licensed, or to exact any such knowledge from the pilots, themselves. * * * The act does not purport to establish regulations for port pilotage, and we can not suppose that, in a measure intended
38 to give greater security to life, Congress would have swept away all the safe guards in this respect, provided by State legislation, without substituing anything in their place. Under the Act, the ports may be left entirely without resident or local pilots, for it does not require the appointment of such pilots though the necessity for them must have been obvious."

Steamship Co. *vs.* Joliffe, 2 Wall. 459.

The legislation of the State of Louisiana upon the subject is elaborate in the extreme, and its effect has been the establishment and maintenance of a system which is most satisfactory in its operation, and of an organized body of men whose worth, capacity and loyalty is beyond praise. The law provides that the number of bar pilots for the port of New Orleans shall not be less than thirty. A bar (or "branch") pilot must be a qualified elector of the State; he must have served in a pilot boat, at the mouth of the river, for twelve months, next preceeding his appointment by the Governor, and he must be recommended for the appointment by a State Board of Examiners consisting of three branch pilots; he must give a bond of $2000, approved by the Master and Wardens of the Port of New Orleans. He must not absent himself from his station for more than seven days without leave, granted by the Governor upon the written recommendation of the Board of Examiners; he may be suspended or removed by the Governor; he must be owner or part owner of, at least, one, decked, pilot boat, of not less than 50 tons burden, which must be kept employed as a pilot boat; he is liable to suspension, fine and imprisonment if he refuses or neglects to board a ship when called.

In 1971, Congress passed another Act (Act Feby. 28, 1871), which, in repealing the Act of 1852, provided that: "nothing in this

act shall be construed to annul or affect any regulation, established by the laws of any State, requiring vessels entering or leaving a port of any such State, other than coastwise steam vessels, to take a pilot duly licensed or authorized by the laws of such State, or of a State situate upon the waters of such State."

39 In June, 1874, still another act was passed (act of June 1, 1874,) authorizing the Secretary of War to assume full control "over the particular channel" (the South Pass) "at the mouth of the Mississippi River, in the course of excavation or improvement by the government of the United States," so far as might be necessary to the carrying on, and the protection, of such work, and one Williams, holding a license as pilot from the local inspectors of the port of New Orleans and assuming to act under it, having been prosecuted for so doing, under the Statute of 1877 which is here called in question, defended, on the ground that the Act of Congress, of 1874, had deprived the State of its pilotage jurisdiction *quoad* the channel, or pass, referred to in that Act. This Court, however, held that the Act had no such purpose, or effect, and that there had been no legislation by Congress which repealed or superseded the pilotage laws of the State. State *ex rel.* Williams *vs.* Judge, 36 An. 122.

We are of opinion that the view thus expressed is entirely applicable to the present situation. In conclusion, we may say, that we have examined the law of Mississippi upon which relator relies (Code of Mississippi of 1892, Sec-. 2252 to 2296, as amended by Act of 1896, Ch. 128), and we do not conclude therefrom that it was the intention of the Legislature of that State to authorize the issuance of licenses to persons to engage in piloting in waters lying wholly outside of the State of Mississippi and wholly inside the State of Louisiana, and we doubt very much whether the license as issued to the relator was intended to be so used.

It is therefore ordered, adjudged and decreed that the restraining order herein made, be rescinded, that the writ of prohibition prayed for by relator be denied and that this proceeding be dismissed at relator's cost.

40 *Petition for Rehearing.*

Supreme Court of Louisiana.

No. 16583.

STATE OF LOUISIANA
vs.
JOHN LEECH.

In re John Leech Applying for Writs of Certiorari and Prohibition.

To the Honorable Justices of the Supreme Court of the State of Louisiana:

The petition of John Leech, relator in the above cause, with respect, shows:

That in the opinion and decree rendered in this cause on the 27th

day of May, 1907, there is error to the prejudice of relator, and that a rehearing should be granted herein for the following reasons:

First. The Court erred in holding that Section 2, of Act 63, of 1877, Extra Session, of the General Assembly of the State of Louisiana, sought to be enforced against relator herein, was a constitutional act.

Second. The Court erred in holding that Section 2, of Act 63, of 1877, Extra Session, of the General Assembly of the State of Louisiana, in so far as it sought to impose a penalty and inflict punishment on relator, a duly and legally licensed pilot of the Harbor of Natchez, State of Mississippi, for piloting from the Gulf of Mexico to the Port of New Orleans, on the waters of said Gulf of Mexico and of the Mississippi River, a vessel bound from a foreign port to the Port of New Orleans, was not violative of the Act of Congress of March 2, 1837, and of Article 1 of the Constitution of the United States conferring upon Congress the power to regulate commerce with foreign nations and among the several States.

Third. The Court erred in holding that the Mississippi
41 River, from the Gulf of Mexico to the Port of New Orleans, was not waters constituting the boundary between the State of Mississippi as contemplated in the Act of Congress of March 2, 1837.

Fourth. The Court erred in holding that the State of Mississippi could not legally empower the Board of Harbor Commissioners of the Harbor of Natchez, State of Mississippi, to license relator to do what he did and in holding that it did not so empower the said Board of Harbor Commissioners so to license relator.

Fifth. The Court erred in holding that the Board of Harbor Commissioners of the Harbor of Natchez did not license relator to do what he is herein charged with having done.

For the foregoing and other errors manifest in said opinion and decree, petitioner prays that said decree be vacated and set aside, and that a rehearing be granted herein; and for all general relief.

(Signed) GEO. H. TERRIBERRY,
Attorney for Relator.

(Endorsed:) No. 16,585. Supreme Court of Louisiana. State of Louisiana *vs.* John Leech. *In re* John Leech, applying for Writs of Certiorari and Prohibition. Petition for Rehearing. Filed June 4, 1907. (Signed) Paul E. Mortimer, Deputy Clerk.

Rehearing Refused.

(Extracts from Minutes.)

NEW ORLEANS, SATURDAY, *June 29th*, 1907.

The Court was duly opened pursuant to adjournment.

Present: Their Honors: Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

42 No. 16583.

STATE OF LOUISIANA
vs.
JOHN LEECH.

In re John Leech Applying for Writs of Certiorari and Prohibition.

By the COURT:

It is ordered that the Rehearing applied for in this case be refused.

Petition for Writ of Error.

Supreme Court of Louisiana.

No. 16583.

STATE OF LOUISIANA
versus
JOHN LEECH.

In re John Leech Applying for Writs of Certiorari and Prohibition.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

The petition of John Leech, defendant and relator, in the above entitled numbered cause, respectfully shows:

That on the 27th day of May, 1907, this Honorable Court rendered a decree and entered a judgment in this cause in favor of plaintiff and against defendant and relator, your petitioner, which said decree and judgment became final on the 29th day of June in the year, 1907.

That in said decree and judgment, and in the proceedings prior thereto, certain errors were committed, to the prejudice of your petitioner, all of which will appear in detail from the assignment of errors, which is filed with this petition.

43 That in this case petitioner has claimed rights, privileges, and immunities under the Constitution and laws of the United States, and that the decree and judgment of this Honorable Court is adverse to the same.

That there was drawn in question in this case the validity of Section 2, of Act 63, of 1877, Extra Session, of the General Assembly of the State of Louisiana, approved April 13, 1877, and of an authority exercised under said Statute, on the ground of its being repugnant to the Constitution of the United States, and especially to Article One of said Constitution, and also on the ground of its being repugnant to the laws of the United States, and especially to the act of Congress of March 2, 1837; that the decree and judgment of this Honorable Court was in favor of the validity of said statute and of the authority exercised thereunder, and against the right, title, privilege and immunity specially set up and claimed by your petitioner,

defendant in said cause, wherein a manifest error has happened, to the great damage of your petitioner.

That petitioner desires a writ of error, to operate as a supersedeas, may issue in this behalf to the Honorable the Supreme Court of the United States.

Wherefore, petitioner prays that a writ of error, to operate as a supersedeas, may issue in this behalf to the Honorable the Supreme Court of the United States, for correction of the errors so contained; that a transcript of the record of the proceedings and papers in this case, duly authenticated, may be sent to the said Supreme Court of the United States, all according to law.

(Signed) GEO. H. TERRIBERRY,
Attorney for Petitioner.

Order.

Let a writ of error be granted unto John Leech, the petitioner herein, to the Supreme Court of the United States upon his
44 furnishing bond, with good and solvent security, and conditioned according to law, in the sum of five hundred dollars.

New Orleans, July 2nd, 1907.

(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

(Endorsed:) No. 16,583. Supreme Court of the State of Louisiana. State of Louisiana *vs.* John Leech. Petition for writ of error. Filed July 2, 1907. (Signed) T. McC Hyman, Clerk.

Assignment of Errors.

Supreme Court of Louisiana.

No. 16583.

STATE OF LOUISIANA
versus
JOHN LEECH.

In re John Leech Applying for Writs of Certiorari and Prohibition.

Assignment of Errors.

John Leech, defendant and relator in the above styled and numbered cause, in connection with his petition for writ of error, make the following assignment of errors, which, he avers, are to be found in the opinion, judgment, and decree of this Honorable Court in this matter:

First. The Court erred in holding that Section 2, of Act 63, of 1877, Extra Session, of the General Assembly of the State of Louisiana, sought to be enforced against relator herein, was a constitutional act.

Second. The Court erred in holding that Section 2, of Act 63, of 1877, Extra Session, of the General Assembly of the State of Louisiana, in so far as it sought to impose a penalty and inflict
45 punishment on relator, a duly and legally licensed pilot of the Harbor of Natchez, State of Mississippi, for piloting, from the Gulf of Mexico to the Port of New Orleans, on the waters of said Gulf of Mexico and of the Mississippi River, a vessel bound from a foreign port to the Port of New Orleans, was not violative of the Act of Congress of March 2, 1837, and of Article 1 of the Constitution of the United States conferring upon Congress the power to regulate commerce with foreign nations and among the several States.

Third. The Court erred in holding that the Mississippi River, from the Gulf of Mexico to the Port of New Orleans, was not waters constituting the boundary between the States of Louisiana and Mississippi as contemplated in the Act of Congress of March 2, 1837.

Fourth. The Court erred in holding that the State of Mississippi could not legally empower the Board of Harbor Commissioners of the Harbor of Natchez, State of Mississippi, to license relator to do what he did and in holding that it did not so empower the said Board of Harbor Commissioners so to license relator.

Fifth. The Court erred in holding that the Board of Harbor Commissioners of the Harbor of Natchez did not license relator to do what he is herein charged with having done.

(Signed) GEO. H. TERRIBERRY,
Attorney for Relator.

(Endorsed:) No. 16,583. Supreme Court of Louisiana. State of Louisiana *vs.* John Leech. Assignment of Errors. Filed July 2, 1907. (Signed) T. McC Hyman, Clerk.

46 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Louisiana and John Leech entitled "*In re* John Leech applying for writs of Certiorari and Prohibition, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of

the Constitution, or of a treaty, or statute of, commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said John Leech, defendant and relator as by his complaint appears. We being willing that, error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Su-

47 preme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 2 day of July, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] (Signed) H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
(Signed) JOS. A. BREAUX,
Chief Justice.

(Endorsed:) No. 16,583. State of Louisiana *versus* (Writ of Error) John Leech. Copy of a Writ of Error lodged in the Clerk's Office of the Supreme Court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this 2nd, day of July one thousand nine hundred and seven. (Signed) Geo. H. Terriberry, Attorney of Plaintiff in Error. Filed July 2nd, 1907. (Signed) T. McC Hyman, Clerk.

48 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Louisiana and John Leech entitled "*In re* John Leech applying for writs of certiorari and prohibition wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their

being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause
49 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said John Leech defendant and relator as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and fully and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 2 day of July, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] H. J. CARTER,
Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.

Allowed by
JOS. A. BREAUX,
Chief Justice.

[Endorsed:] No. 16583. The State of Louisiana *versus* John Leech, Defendant in Error. Writ of Error. Copy of a writ of error lodged in the Clerk's Office of the Supreme Court of Louisiana, in pursuance of the statute in such cases made and provided. Filed July 2, 1907. T. McC. Hyman, Clerk.

50 *Bond.*

Supreme Court of the State of Louisiana.

No. 16583.

STATE OF LOUISIANA
vs.
JOHN LEECH.

Know all men by these presents, That we, John Leech, as principal, and Geo. H. Terriberry, of the City of New Orleans, as surety, are held and firmly bound unto the Governor of the State of Louisiana, and his successors in office, in the full and just sum of Five

Hundred and 00/100 ($500.00) Dollars; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, successors, administrators, and assigns, jointly and severally by these presents:

Sealed with our seals and dated this third day of July, in the year of our Lord, one thousand nine hundred and seven.

Whereas, lately at a session of the Supreme Court of the State of Louisiana, in a suit depending in said Court between the said obligee, the State of Louisiana, and said John Leech, entitled "State of Louisiana *versus* John Leech, *in re* John Leech applying for writs of certiorari and prohibition," being Number 16,583 of the docket of said Supreme Court of the State of Louisiana, a judgment was rendered against said defendant, obligor, which became final on the 29th day of June, 1907. And the said John Leech, said defendant, obligor, having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the final judgment in the aforesaid suit, and a citation addressed to said obligee, plaintiff, citing and admonishing it to be and appear before the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, within thirty days from the date of said citation.

51 Now, therefore, the condition of the above obligation is such, that if the said John Leech shall prosecute his writ of error to effect and answer all costs if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) JOHN LEECH.
By GEO. H. TERRIBERRY,
His Attorney.

(Signed) GEO. H. TERRIBERRY,
Surety.

Sealed with our seals and delivered in the presence of
FERDINAND E. ZIMMER.

STATE OF LOUISIANA, *Parish of Orleans, ss:*

Before me, the undersigned Notary Public, in and for the Parish of Orleans, State of Louisiana, personally came and appeared Geo. H. Terriberry, who, being sworn, deposes and says:

I am worth, over and above all my just debts and property exempt by law from execution, the sum of Two Thousand dollars ($2,000.00).

(Signed) GEORGE H. TERRIBERRY.

Sworn to and subscribed before me, this 3rd day of July, 1907.

[SEAL.] (Signed) J. KENTON BAILEY,
Notary Public.

Approved.
(Signed) JOS. A. BREAUX,
Chief Justice.

(Endorsed:) No. 16,583. Supreme Court of Louisiana. State of Louisiana *vs.* John Leech. Bond and Affidavit. Filed July 8, 1907. (Signed) T. McC. Hyman, Clerk.

52 *Certificate of the Clerk.*

UNITED STATES OF AMERICA, *State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, Clerk of the Supreme Court of the State of Louisiana do hereby certify that the foregoing Fifty-one (51) pages, contain a full true and complete copy of the transcript of the proceedings had in the 29th Judicial District Court for the parish of Plaquemines, in a certain suit wherein State of Louisiana was plaintiff and John Leech was defendant, and also of all the proceedings had in this Supreme Court on the appeal taken by said Defendant, which appeal is now on the files thereof under No. 16,583.

In testimony whereof I have hereunto set my hand and affixed the seal of this Honorable Court, at the City of New Orleans, this fifteenth day of July *Anno Domini* — and in the one hundred and thirty second year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

53 *Certificate of the Chief Justice.*

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is Clerk of the Supreme Court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of *his* the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official act- as such.

In testimony whereof, I have hereunto set my hand and Seal at the city of New Orleans, this the Fifteenth day of July, *A. D.,* one thousand nine hundred and seven.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX, Clerk.

54 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State

of Louisiana at New Orleans, wherein John Leech is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said John Leech, plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this — day of —— in the year of our Lord one thousand nine hundred and seven.

[SEAL.] JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

New Orleans, July 10th, 1907.

Service accepted for the State of Louisiana.
WALTER GUION,
Att'y General.

[Endorsed:] Supreme Court of the State of Louisiana. No. 16,583. State of Louisiana *vs.* John Leech. Citation. Sheriff's Return. Filed July 10, 1907. T. McC. Hyman, Clerk.

Endorsed on cover: File No. 20,818. Louisiana supreme court. Term No. 152. John Leech, plaintiff in error, *vs.* The State of Louisiana. Filed August 1, 1907. File No. 20,818.

Supreme Court of the United States

OCTOBER TERM, 1908.

No. 152.

JOHN LEECH,

PLAINTIFF IN ERROR,

VERSUS

STATE OF LOUISIANA,

DEFENDANT IN ERROR.

In Error to the Supreme Court of Louisiana.

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

SYLLABUS.

A regulation of pilots is a regulation of commerce, within the grant of power to Congress in the Constitution of the United States.

Cooley vs. Wardens of Port of Philadelphia, 53 U. S. (12 Howard) 299. 13 L. Ed. 996.

The Act of August 7, 1789 (1 Stat. 54), is not a grant of power to the States to pass pilot laws, but a legislative recognition that the power is concurrent in the States and the United States until exercised by the latter.

The Panama, Fed. Case No. 10,702, 1 Deady, 27.

The navigable waters of the former Territories of Orleans and Louisiana are public waterways of the nation, subject to common use.

Act of Congress of March 3, 1811, Ch. 46, 2 Stat. L. 666.

The provisions of a State law, regulating pilots and pilotage, which are in direct and manifest conflict with Act of Congress of March 2, 1837, concerning pilots, are inoperative and void.

The South Cambria (D. C.), 27 Fed. Rep. 525.

A pilot licensed by the State of Delaware is entitled to recover for services in piloting a vessel up the Delaware Bay and River to Philadelphia, notwithstanding a law of Pennsylvania prohibiting anyone from acting as such pilot without a Pennsylvania license.

The Clymene (D. C.), 9 Fed. Rep. 164; the Clymene (C. C.), 12 Fed. Rep. 346.

Act of Congress of March 2, 1837, authorizing the master of a vessel bound to, or from, a port situate on waters which are the boundary between two States, to employ a pilot licensed by the laws of either State, applies to the laws of coterminous States situate upon a navigable river which is not a separating boundary between them.

The Clymene (D. C.), Fed. Rep. 164; 12 Fed. Rep. 346.

A statute of the State of Louisiana which purports to give to that State absolute authority over the subject

of pilots and pilotage on the Mississippi River to the exclusion of other States bordering thereon is inoperative and void for the reason that it conflicts with Act of Congress of March 2, 1837.

The Glenearne, 7 Fed. Rep. 604; The Clymene, 9 Fed. Rep. 164, 12 Fed. Rep. 346; The Chas. A. Sparks, 16 Fed. Rep. 480; The Abercorn, 26 Fed. Rep. 877; The South Cambria, 27 Fed. Rep. 525; The Alcalde, 30 Fed. Rep. 133; Dryden vs. Commonwealth, 55 Ky. 598; Cribb vs. State, 9 Fla. Rep. 409.

As Rule 21 of the Court was not strictly followed in the preparation of the original brief herein, plaintiff in error prays permission to file this supplemental brief, which he asks the Court to regard as the brief in the cause.

Facts and Pleadings.

John Leech was arrested on March 12, 1907, by the Sheriff of the Parish of Plaquemines, charged, in an information, with having piloted, from the Gulf of Mexico to the Port of New Orleans, through the mouths of the Mississippi River, and through said river, a foreign steam vessel bound from a foreign port to the City of New Orleans, without a license from the State of Louisiana so to do.

The accused was arraigned on April 8, 1907, before the Honorable Nemours H. Nunez, Judge of the Twenty-ninth Judicial District Court, and filed a demurrer to the infor-

mation on the ground that said information was insufficient, in that it did not set forth that Leech was without authority from any other State having, in common with the State of Louisiana, jurisdiction over the subject of pilotage on the Mississippi River, which allegation was essential for the reason that Congress, by virtue of its authority to regulate commerce with foreign nations and among the several States, has, by act approved March 2, 1837, made it lawful for any pilot duly licensed or authorized by the laws of either of said States to pilot any vessel to or from said port. This demurrer was overruled and a bill of exceptions was taken to the ruling.

The accused, thereupon, through his counsel, filed a motion to quash said information for the following reasons, to wit:

> "That under, and by virtue of, Paragraph 3, Section 8, Article 1, of the Constitution of the United States, Congress has power to regulate commerce with foreign nations and among the several States; that, in pursuance of said power, Congress did, by act approved March 2, 1837, provide that it shall be lawful for the master of any vessel coming into, or going out of, any port situate upon waters which are the boundary between two States to employ any pilot duly licensed or authorized by the laws of either of the States bounded on said waters to pilot said vessel to, or from, said port, any law, usage or custom to the contrary notwithstanding; that, under the laws of the State of Mississippi, a State bounded upon waters upon which the Port of New Orleans is situate, the Board of Harbor Commissioners of the Harbor of Natchez is duly authorized to issue licenses permit-

ting persons so licensed to act as pilots upon the waters of the Natchez harbor, and all passes leading into the same to and from the sea; that, on May 12, 1906, said Leech was duly licensed for the term of two years from said date to act as pilot upon all passes leading into the Natchez harbor and to and from the sea; that, now and at the date named in the information, Leech is, and was, holder of said license, and, as such, entitled to all the rights, privileges, and immunities by said license conferred; that any statute of the State of Louisiana that pretends to confer upon the officers of said State a power to prosecute persons acting as pilots, who have been licensed or authorized to act as pilots by such States as are described by said Act of Congress, is, to that extent, null, void and of no effect, being repugnant to said Act of Congress adopted under said commerce clause of the Constitution of the United States, and this Honorable Court is wholly without power, right or jurisdiction in such case to enforce said statute."

On this motion to quash, plaintiff in error filed in evidence his license from the Harbor of Natchez, and the law of the State of Mississippi relative to harbors and pilots, and himself testified that he was the same John Leech mentioned in said license, and that he did pilot the British steam vessel "Evona" from the Gulf of Mexico to the City of New Orleans; that he knew said vessel was bound from a foreign port to the port of New Orleans, and that his said license from the Harbor of Natchez, State of Mississippi, was the authority under which he was acting, and that he had the said license with him at the time he so piloted said vessel.

The motion to quash was overruled by the Court, and a bill of exceptions was reserved.

The accused was then tried and found guilty. A motion in arrest of judgment was filed and overruled by the Court.

The accused thereupon gave written notice to the Court that he would apply to the Supreme Court of the State of Louisiana for writs of *certiorari* and prohibition, which said application was accordingly made. Mr. Chief Justice Breaux, on the 10th day of April, 1907, ordered that the District Judge forward to the Supreme Court the record of the proceedings had before him in the case, to the end that their validity might be inquired into. The said Judge was also commanded to show cause on Saturday, April 20, 1907, why a writ of prohibition should not issue as prayed for, and that, in the meantime, the proceedings be stayed until the further orders of the Supreme Court.

On May 27, 1907, the Supreme Court of Louisiana rescinded the restraining order, denied the writ of prohibition, and dismissed the proceeding. (Printed transcript, pages 22, 23, 24, 25 and 26.) A rehearing was applied for and refused (printed transcript, pages 28 and 29), and, thereupon, the said judgment became final. Whereupon this writ of error was prosecuted.

The facts in the case are very simple and about them there is no dispute. They are to be found in the printed transcript, pages 6, 7 and 8.

Assignments of Error.

Plaintiff in error places his main reliance in second, fourth and fifth assignments of error. The assignments follow:

> "Second. The Court erred in holding that Section 2 of Act 63 of 1877, extra session of the General Assembly of the State of Louisiana, in so far as it sought to impose a penalty and inflict punishment on relator, a duly and legally licensed pilot of the Harbor of Natchez, State of Mississippi, for piloting, from the Gulf of Mexico to the Port of New Orleans, on the waters of said Gulf of Mexico and of the Mississippi River, a vessel bound from a foreign port to the Port of New Orleans, was not violative of the Act of Congress of March 2, 1837, and of Article 1 of the Constitution of the United States, conferring upon Congress the power to regulate commerce with foreign nations and among the several States." (Printed transcript, page 28.)
>
> "Fourth. The Court erred in holding that the State of Mississippi could not legally empower the Board of Harbor Commissioners of the Harbor of Natchez, State of Mississippi, to license relator to do what he did, and in holding that it did not so empower the said Board of Harbor Commissioners so to license relator.
>
> "Fifth. The Court erred in holding that the Board of Harbor Commissioners of the Harbor of Natchez did not license relator to do what he is herein charged with having done."

Section 2 of Act 63 of 1887, extra session of the General Assembly of the State of Loui ıa, approved April 13, 1877, the validity of which is attacked in this cause, reads as follows:

> "Sec. 2. That whoever shall be guilty of acting, or attempting to act, as pilot to any vessel, inward

or outward bound, to and from the Port of New Orleans, who is not a duly licensed branch pilot, shall suffer fine not exceeding the sum of one hundred dollars, or imprisonment not exceeding two months, or both, at the discretion of the Court.

Wolff's Revised Laws of La., p. 640.

Argument.

I.

The second assignment of error is as follows:

> "Second. The Court erred in holding that Section 2 of Act 63 of 1877, extra session of the General Assembly of the State of Louisiana, in so far as it sought to impose a penalty and inflict punishment on relator, a duly and legally licensed pilot of the Harbor of Natchez, State of Mississippi, for piloting, from the Gulf of Mexico to the Port of New Orleans, on the waters of the said Gulf of Mexico and of the Mississippi River, a vessel bound from a foreign port to the Port of New Orleans, was not violative of the Act of Congress of March 2, 1837, and of Article 1 of the Constitution of the United States conferring upon Congress the power to regulate commerce with foreign nations and among the several States." (Printed transcript, page 28.)

The third clause of Article 8 of the Constitution of the United States confers upon Congress the power to regulate commerce with foreign nations, and among the several States. This has been construed to confer upon Congress jurisdiction over the subject of pilotage. That department of the Federal Government has control over the subject of pilotage of domestic and foreign vessels to and

from all ports of the Union, subject only to the restriction found in Section 9 of the same article, which provides that:

> "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another."

The first legislation by Congress on this subject is the Act of 1789, which declares:

> "Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors and ports of the United States, shall continue to be regulated in conformity with the existing laws of the States, respectively, where such pilots may be, or with such laws as the States may respectively enact for that purpose."

The Supreme Court of the United States has repeatedly construed this act as being virtually the adoption or recognition by Congress of the State laws regulating pilotage.

> **Cooley vs. Board of Wardens, 12 Howard, 299-322; Wilson vs. McNamee, 12 Otto, 572; Ex Parte Hager, 14 Otto, 520; Ex Parte McNeil, 13 Wallace, 236.**

On March 2, 1837, Congress passed an act (United States Statutes 4236) authorizing a vessel entering or departing from a port situate upon waters forming the boundary between two States to employ a pilot licensed by either State.

While Congress has jurisdiction over the subject of pilotage, it will be seen that it has not seen fit to exercise such jurisdiction. In order, however, to provide for hos-

tile and inconsistent legislation, which would naturally result from the States being permitted to legislate independently on the subject of pilotage, Congress passed the act approved March 2, 1837.

The plaintiff in error claims that this act of Congress confers upon the State of Mississippi, as well as Louisiana and other States bordering upon, bounded by, and coterminous upon, the Mississippi River, equal rights and powers in the matter of licensing pilots to pilot vessels upon the navigable course of said river.

There have been several cases considered by the Federal Courts, and State Courts, in which this Act of Congress of March 2, 1837, has been construed. The leading cases are:

> **The Glenearne, 7 Fed. Rep. 604; The Clymene, 9 Fed. Rep. 164, 1 Fed. Rep. 346; The Chas. A. Sparks, 16 Fed. Rep. 480; The Abercorn, 26 Fed. Rep. 877 (1886); The South Cambria, 27 Fed. Rep. 525 (1886); The Alcalde, 309 Fed. Rep. 133; Dryden vs. Com., 55 Ky. 598; Cribb vs. State, 9 Fla. Rep. 409.**

It would be well, perhaps, to insert in this brief a condensed statement of what was held by the Courts in these cases:

The Glenearne, 7 Fed. Rep. 604 (1881):

The Glenearne, a seagoing vessel of some six hundred tons burden, and sixteen and one-half feet draught, being at Astoria, in carge of a Washington Territory pilot, licensed for the Columbia River only, and bound on a

voyage to Portland, was spoken by an Oregon pilot, who offered his services to conduct her to Portland, which offer was refused. Held:

> "That the vessel might take either pilot while on the Columbia River, but, as only the Oregon one was entitled to pilot her on the Willamette River, his offer was a valid tender, so far, of pilot service, upon refusal of which the vessel became liable to him for one-half pilotage."

The State places much reliance on this decision, as showing that the Territory of Washington enjoyed, with the State of Oregon, jurisdiction over pilotage only to the extent of the Columbia River, the pilotage grounds of the Washington pilots ending at the mouth of the Willamette River. It will suffice to call the Court's attention to the fact that the States of Louisiana and Mississippi are not so situated as to the Mississippi River as are the States of Oregon and the Territory of Washington as to the Willamette River. There is no navigable portion of the Willamette River that is not exclusively within the territory of the State of Oregon. The Willamette River practically takes its source in the State of Oregon, and it empties itself into the Columbia River in the State of Oregon, and no part of it passes through or along the border of the Territory of Washington. On the other hand, the Mississippi River, for a great distance, forms the boundary between the States of Louisiana and Mississippi, and constitutes the outlet to the sea of the one as well as of the other. Then, too, in the case of the Glenearne, the Washington pilot was licensed only for the Columbia River.

The Clymene, 9 Fed. Rep. 164 (1881); 12 Fed. Rep. 346 (1882):

"The respondent's contention that pilotage is a subject of local regulation of the State in which the port lies, and, therefore, that Pennsylvania, in the absence of statutory prohibition, has exclusive jurisdiction of pilotage respecting the port of Philadelphia and its commerce, is unimportant. It is not improper, however, to say (as before intimated) that I could not adopt this position even in the absence of the statute laws referred to. The relation of the States, as members of the General Government, the fact that they are not separate independencies, and that the navigable waters within their respective limits are subject to common use, must be constantly kept in view.

"The commerce on the Delaware Bay and River, no matter where from, or where bound, does not belong to Pennsylvania. That she and her citizens derive a larger share of benefit from it than her neighbors is her good fortune, but it confers no right on her to say who shall enter a port within her limits, or what pilot shall be employed. The port itself, constituted of the public waters of the nation, is not hers, and it is but by the grace of the General Government that she is allowed any independent voice respecting it. In the absence of the statute of 1837, that of 1789, construed in the light of these facts, must have been held to confer on Pennsylvania, I believe, such authority only as is here conceded to her. Before the adoption of the Federal Constitution she had no jurisdiction whatever beyond her territorial limits. Since that event she has none (even within) except such as Congress has conceded to her. She must be content, therefore, with a voice on the subject, in common with her neighbors who with her border on the waters, which constitute her and their outlet to the sea."

This case was appealed to the Circuit Court, and is reported in the 12th Fed. Rep. 347. Circuit Judge McKenna said:

> "The question upon which the decision in this case turns is said to be one of great commercial importance, but I do not think it is difficult of solution. It involves the applicability of the Act of Congress of March 2, 1837, to the pilotage laws of coterminous States, situate upon the same navigable waters, but which are not the separating boundary between them. If such States are within its purview, it is admitted that the libel must be sustained.
>
> "That the Act of Congress is operative upon the laws of States so situated, I have no doubt. Such a construction is clearly within the reason of the act, and such was held to be its effect by the Supreme Court of Pennsylvania in **Flanigan vs. Insurance Company, 7 Barr, 306,** in reference to the law of that State which is in question here.
>
> "But I do not propose to do more than state the conclusion which I have reached. The opinion of the learned Judge of the District Court, in deciding this case, is so satisfactory that I adopt it as showing the reasons for the judgment of this Court."

Plaintiff in error contends that this case conclusively establishes the authority of the State of Mississippi under the Act of Congress, March 2, 1837, to license him to pilot vessels, on the Mississippi River, to and from the sea, and to and from whatever port bound.

After we have supplied the synopses of the decisions which we have heretofore mentioned, we shall return to this case of the Clymene, and discuss it with reference

to the case at bar, for we will frankly state to the Court that we place our main reliance, for the correctness of our contention, in this case.

The Chas. A. Sparks, 16 Fed. Rep. 480 (1883):

> "A pilot licensed by the State of Delaware may, by a libel in **rem**, recover the fees provided by a Delaware statute for pilot services tendered to a vessel on a voyage from a foreign port up the Delaware Bay and River to the port of Philadelphia, after the vessel has crossed a straight line drawn from Cape May light to Cape Henlopen light, although such services were refused, and notwithstanding a statute of Pennsylvania exempted all such vessels from the duty of taking a pilot, and, in case such service was accepted and performed, prescribed a lower rate of compensation than that provided by the Delaware statute."

The Abercorn, 26 Fed. Rep. 877, 28 Fed. Rep. 284 (1886):

> "The Columbia River is the boundary between two States—Oregon and Washington Territory—within the meaning of the Revised Statutes 4236, permitting the master of a vessel, in such case, to employ a pilot licensed by either State; and, therefore, the State of Oregon cannot require him to take an Oregon pilot, or pay him half or any pilotage."

The South Cambria, 27 Fed. Rep. 525:

> "A law of the State of Delaware provides that the first duly licensed pilot who may offer himself to any inward-bound vessel in the Delaware Bay, requiring a pilot, shall take charge of her, and that, if his services are refused, he may sue the master, owner, or consignee thereof for full pilotage. The Act of Congress of March 2, 1837, enacts: 'That it shall and may

be lawful for the master or commander of any vessel coming into or going out of any port situate upon waters which are the boundary between two States, to employ any pilot duly licensed or authorized by the laws of either of the States bounded on the said waters to pilot said vessel to and from said port, any law, usage, or custom to the contrary notwithstanding.' Held: That, although the Delaware Bay and River do not constitute a boundary between the States of Delaware and Pennsylvania, these States, being coterminus, and bordering on the same navigable waters, come within the spirit and meaning of the Act of Congress."

The Alcalde, 30 Fed. Rep. 133 (1887):

"The State of Oregon and Territory of Washington have equal powers over the subject of the regulation of pilots and pilotage on the Columbia River, and may appoint pilots for the river, and prescribe their duties and compensation as to any and all vessels bound in or out of the same, without reference to whether the business or commerce in which they are engaged pertains to Oregon or Washington, and neither can require that the legislation of the other shall conform to its own in any respect."

Dryden vs. Commonwealth, 55 Ky. 598 (1856):

"A license under the Act of 1837, from the Governor of Indiana, to pilot boats over the Falls of the Ohio, is valid, and protects the licensee against the operation of the conflicting statutes of this State."

In reference to the Act of Congress of March 2, 1837, the Court said in this case:

"As by this Act of Congress it was made lawful for the master or commander of the vessel to employ appellant to act as pilot, his going in that capacity could

not, therefore, have been unlawful, nor could it have subjected him to a penalty under the laws of this State. If, then, there be any doubt in reference to the power of a person licensed as a pilot by the inspectors under the Act of Congress of August, 1852, to act as such, independently and in exclusion of all State regulations on the subject, there can be no doubt that a person residing in the State of Indiana, and regularly commissioned by the Governor of that State to act as a pilot at the Falls of the Ohio River, has, under the Act of 1837, a right to act as such without any authority from the State of Kentucky. This act was passed by Congress for the very purpose of preventing conflicts between the laws of the different States with respect to the employment of pilots, and fully embraces the case under consideration."

Cribb vs. State, 9 Fla. Rep. 409:

Cribb was indicted on three counts. We are concerned with only the first and second counts, which, in substance, charge Crib with having pilottd a vessel into, and out of, the harbor of Fernandina without a license from the Commissioner of Pilotage for the port of Fernandina, contrary to the law of the State of Florida. Applying the Act of Congress of March 2, 1837, to this case, the Supreme Court of Florida said:

"There is no doubt that the respective States are the most competent to regulate pilotage within their own ports, and that it is for the general advantage that it should rest with them. With the exception of the said Act of 1837, regulating pilotage in ports situated upon waters which are the boundary between two States, it has been left to them. The question naturally suggests itself: Why did Congress make this exception?

"The answer is: To relieve the commerce of the country from any embarrassment arising from the laws of the different States situated upon the waters which are the boundaries between them. In some such States their laws compelled masters of vessels to take their pilots on board. Each State, where there is a port situate upon waters which are the boundary line between them, without this regulation of commerce, might embarrass commerce by insisting that their pilot shall be taken as pilot. It was also to remedy strife between the two States so embarrassing to the masters, that this act was passed. In fact, it was to meet just such a state of things as exists between the States of Georgia and Florida at the port of Fernandina and St. Mary's. By the regulation under this act of Congress, there is no impediment to commerce. The master of the vessel can employ a pilot licensed by either State, and the licensed pilot of either State can pilot the vessel in or out of the harbor of either State, and over St. Mary's bar."

There are many other decisions in which the Act of Congress in question has been considered, but we have, in the foregoing, furnished the Court with the leading cases.

Let us consider the question raised in the case at bar, in the light of the decision in the case of the Clymene. In that case there was a pilot duly licensed, by the State of Delaware, to pilot vessels on the Delaware Bay and River, and to and from the sea; the Court held: That a pilot so licensed by the State of Delaware could pilot vessels bound from foreign ports to the port of Philadelphia, as well as to any port in the State of Delaware, and that any statute of the State of Pennsylvania that inter-

fered with, or that would prevent, such pilot from so piloting vessels, was inoperative, null and void. It likewise held that any statute of the State of Delaware that asserted exclusive jurisdiction, on the part of that State, over the subject of pilotage on the Delaware Bay and River, was equally inoperative, null and void. We invite the Court's particular study of this case of the Clymene, and we also request that the Court will examine a map of the States of Delaware and Pennsylvania, in order that the full import of this decision may be appreciated. The reasoning of the Judge of the United States District Court, which reasoning is adopted by the Judge of the Circuit Court in that case, is very full and clear. As we read it and understand the conclusions that the Court reached, we see that the Delaware Bay and River are waterways belonging to the nation; that the States bordering on that river and bay have no jurisdiction whatever over them in matters of commerce, except such as Congress may specially concede to them. The Court said, referring to the State of Delaware:

> "She may license pilots and provide regulations for their government and employment, but she may not exclude others, duly licensed elsewhere, from employment on the public waters of the nation, because these waters happen to be within her territorial limits. Those from Pennsylvania, as well as her own, may lawfully exercise their calling there, and vessels requiring such services may elect whom they will employ. * * * The commerce of the Delaware Bay and River, no matter where from or where bound, does not belong to Pennsylvania. That she and her

citizens derive a larger share of benefit from it than her neighbors is her good fortune, **but it confers no right on her to say who shall enter a port within her limits, or what pilot shall be employed. The port itself, constituted of the public waters of the nation, is not hers, and it is but by the grace of the General Government that she is allowed any independent voice respecting it.** * * * Before the adoption of the Federal Constitution, she had no jurisdiction whatever **beyond her territorial limits.** Since that event she has none (even within) except such as Congress has conceded to her. **She must be content, therefore, with a voice on the subject in common with her neighbors, who, with her, border on the waters which constitute her and their outlet to the sea.''** (Black-letter ours.)

What language could be stronger? It means one thing and one thing only, and that is that the Federal Government, by the Act of March 2, 1837, has given, if not already possessed, to every State bordering upon any of the public waters of the nation, an equal voice concerning the use of those waters. It means that just as a Pennsylvania licensed pilot cannot only pilot a vessel on those waters where Pennsylvania borders upon them, but can likewise exercise his calling throughout the navigable course of said river and bay, and to and from the sea, and to and from whatever port his vessel may be bound, so, likewise, can a Delaware licensed pilot pilot a vessel on those waters, not only where they touch the shores of Delaware, but he can also exercise his calling, under his authority from the State of Delaware, on those waters beyond the limits of his State, and on north to where they

penetrate the State of Pennsylvania. Is it not clear, therefore, that all the States bordering upon the Mississippi River have, with Louisiana, an equal voice on the subject of pilotage throughout the navigable course of said river? The Mississippi River forms the boundary between the State of Mississippi on the one side, and the States of Arkansas and Louisiana on the other, as well as of many States further north. It constitutes an outlet to the sea, if occasion be had to use it, of the States of Missouri, Illinois, Kentucky, Tennessee, Mississippi, Arkansas, Louisiana, and others. Are these States to be considered as not coming within the purview of the Act of Congress of March 2, 1837, simply because, for a very small distance above the mouth of said river, it is exclusively within the territory of Louisiana? We do not think that it was ever the intent of Congress to deny them such a right. An examination of the map will show that the State of Mississippi borders on the Mississippi River from the southwestern corner of the State of Tennessee, down past Arkansas, and greater than one-half of Louisiana, and it is very clear that, by the Act of Congress of March 2, 1837, that State, as well as others bordering on said river, should be considered as enjoying equal rights as far as the subject of pilotage is concerned. We do not see how the matter could be expressed more forcibly than it is in the **Clymene case.**

It is also well to suggest that New Orleans is not a port of Louisiana. It is a port of entry of the United States, and, as such, it is created by the United States. The State of Louisiana has no authority whatever to define its limits

as a port, nor can it say what vessels may or may not enter it, nor what pilots may or may not pilot vessels into it. These conclusions are irresistible if the **Clymene case** is any authority as interpreting the intent of Congress in passing the Act of March 2, 1837.

The Court, in the **Clymene case**, took a broad and fair view of the law; it put itself on record as interpreting the laws as affording equal rights, authority and privileges to all States so situated upon the navigable rivers of the nation; it was not concerned in whether or not the determination of the question presented would interfere with the monopolistic interests of any association of pilots. The view it took of the law was one of incalculable benefit to commerce, for the reason that it unfettered commerce and subjected piloting and pilotage to the competition that naturally arose from the doing away with the idea, which the States had theretofore had, of exclusive jurisdiction in them over the subject of pilotage.

II.

The fourth and fifth assignments of error are as follows:

> "FOURTH. The Court erred in holding that the State of Mississippi could not legally empower the Board of Harbor Commissioners of the Harbor of Natchez, State of Mississippi, to license relator to do what he did, and in holding that it did not so empower the said Board of Harbor Commissioners so to license relator.
>
> "FIFTH. The Court erred in holding that the Board of Harbor Commissioners of the Harbor of Natchez did not license relator to do what he is herein charged with having done."

The fourth assignment as to the power of the Legislature of Mississippi has, for all practical purposes, been fully covered by the foregoing argument. We will here consider whether plaintiff in error was licensed to do what he did.

Was the accused a pilot duly licensed by the Harbor of Natchez to do what he undertook to do?

The accused offered, produced and filed in evidence his license, under which he was acting when he piloted the Evona from the sea to the City of New Orleans, which license reads as follows:

"THE STATE OF MISSISSIPPI

"TO

"PILOTS.

"THIS IS TO CERTIFY, That John Leech has given satisfactory evidence to the undersigned Board of Pilot Commissoners for the Harbor of Natchez that he is a skillful pilot, and can be intrusted to perform such duties upon the waters of **Natchez Harbor and all passes leading into the same, and to and from the sea,** and he is hereby licensed to act as pilot for the term of two years from this date on the above-named route.

"Given under our hands, this 12th day of May, 1906.

"W. G. BENBROOK, Mayor,

"For Board of Pilot Commissioners,

"City of Natchez, Miss.

"Attest:

"GEO. T. EISELE,

"Clerk Board of Pilot Commissioners."

There was also offered in evidence Chapter 59 of the Code of the State of Mississippi, of the year 1892. It reads as follows:

"**CHAPTER 59.**

"**Harbors.**

"2252. **Jurisdiction Over Harbors.**—The Board of Supervisors of each county having a seaport or harbor therein shall appoint three citizens of sufficient skill and knowledge in maritime affairs as a board of pilot commissioners, who shall have jurisdiction over the harbors and passes leading thereto of their respective counties; but the Mayor and Board of Aldermen of the cities of Natchez, Vicksburg and Greenville shall have jurisdiction of, and be the harbor commissioners for, their respective harbors.

"2253. **Commissioners to Keep Record of Their Proceedings.**—The several boards of pilot commissioners shall keep a record of their acts and doings, which shall be public records, to be kept and preserved by the clerk of the board.

"2254. **Terms of Office and Vacancies.**—The term of office of pilot commissioners shall be four years, and, upon the death, resignation or removal from office of any commissioner, the board of supervisors shall fill the vacancy.

"2255. **Oath and Bond; Pilot Commissioners to Act as Port-Wardens.**—The pilot commissioners are empowered to act as port-wardens, and to perform all duties as such. They shall, before entering on their duties, take an oath (that prescribed by Section 268 of the Constitution), and give bond, to be approved by the clerk of the Chancery Court of their

respective counties, in the penalty of one thousand dollars, conditioned for the faithful performance of their duties.

"2256. **Harbor and Port Regulations.**—The pilot commissioners shall make and publish all needful regulations for the government of the harbor and port, and may prescribe fines, penalties and foreitures, and are empowered to enforce and collect the same.

"2257. **Duties of Harbor-Masters; Term of Office, Oath and Bond; Fees.**—The pilot commissioners shall appoint a harbor-master, who shall pass the same examination as to proficiency required of pilots as to handling vessels, knowledge of the harbor, and the anchorage of vessels therein. His term of office shall be two years. He shall take the oath of office required by Section 268 of the Constitution, and must give bond, to be approved by the pilot commissioners, in the penalty of ont thousand dollars, conditioned for the faithful performance of his duty. The harbor-master shall have general supervision of the harbor and port, under the direction of the pilot commissioners, and shall be entitled to charge the following fees, payable by the ship, steamship or sailing vessel to which service is rendered, viz.: Boarding fee, $5; moving fee, $5; superintending the discharge of ballast, not exceeding $3.50 a day for each day actually engaged.

"2258. **Duties of Port-Wardens; Preference to Present Pilots.**—The pilot commissioners, as port-wardens, shall have control of the harbor and port, see that the harbor-master and pilots perform their duty, and that the regulations are carried out; they shall hold marine surveys, and perform such other duties as may be required by the regulations and the character of their office. They shall, as soon as quali-

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fied, and at such other times as may be necessary, examine the pilots acting as such who have licenses, and all persons who may make application to be licensed as pilots, in all matters pertaining to the management of vessels, also in regard to their knowledge of the channel and harbor where they wish to act. If, upon examination, they be found qualified to take command of all vessels which probably will enter the port, and thoroughly familiar with the channel and currents of the harbor, the pilot commissioners shall first appoint and license the pilots heretofore appointed and licensed, and then such other persons, of those qualified, as are requisite to perform the duties at that port, and for a term of two years; but the pilot commissioners shall have power to revoke the license of any pilot or harbor-master for misbehavior, neglect of duty, drunkenness or incompetency, or any other cause detrimental to the interest of commerce and navigation. The board of commissioners shall require from each pilot satisfactory bond for the faithful performance of his duties.

"2259. **Compensation of Officers and Compulsory Pilotage.**—The board of pilot commissioners shall receive the sum of ten dollars from each pilot and harbor-master whom it examines, appoints and licenses. The fees allowed pilots for compulsory pilotage shall not, in any case, exceed four dollars per foot; and all United States vessels of one hundred and fifty tons burden or less shall not be subject to compulsory pilotage. The pilot commisisoners of each city or county may fix the rate of pilotage which shall be paid by vessels entering and leaving their respective harbors, but in no case shall they fix the rate greater than now provided by law. They shall also regulate the compensation and fees of harbor-masters and port-wardens.

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"2260. **Pilots Licensed; Preferences.**—In appointing pilots, preference shall be given those persons who have acted as pilots, or may have served an apprenticeship in this State with a pilot, if they pass the requisite examination.

"2261. **Apprenticeship.**—After the year eighteen hundred and ninety-four a new applicant cannot be appointed to the position of pilot unless he possess the qualifications prescribed in this chapter, and has served an apprenticeship with a pilot in this State.

"2262. **Penalty for Piloting Without License; Misconduct.**—Any person acting as a pilot without being duly licensed, shall be guilty of a misdemeanor and punished accordingly, and shall forfeit and pay to the pilot commissioner the sum of two hundred and fifty dollars for every day while so acting.

"2263. **Compensation of Pilots Detained in Quarantine; Penalty for Carrying Pilot to Sea.**—In all cases where any pilot shall be detained in quarantine by reason of having boarded a vessel in the discharge of his duty as a pilot, the vessel and her owners shall be required to pay him three dollars per day during the time of his necessary detention in quarantine; but the provisions of this section apply only to harbors or ports on the seacoast. If the master of any vessel carrying off a pilot from any seaport, he shall pay such pilot the sum of five dollars per day for every day the pilot is absent, and he shall further supply the pilot with provisions and accommodations as is usual for the maintenance of masters of vessels, and the master, as well as the owner, shall be liable for the same; but, if such vessel have laid to for the space of four hours after crossing the bar, and a pilot-boat did not appear to receive the pilot, the claim shall not be allowed.

"2264. **Quorum.**—Any two of the pilot commissioners shall constitute a quorum for the transaction of business.

"2265. **Terms of Office Not to Expire.**—The terms of office of the present pilot commissioners shall not expire until the end of the time for which they were appointed.

"2266. **Special Laws Repealed.**—All special or local laws providing for pilot commissioners, limiting the number of pilots and requiring the serving of an apprenticeship, and relating thereto, are hereby repealed."

The foregoing laws have been somewhat amended by the Legislature of Mississippi at the session of 1896, Chapter 128, page 140, of the acts of that year. We quote below the only three sections bearing on this controversy, which are Sections 2252, 2258, 2259 and 2261. These sections are as follows:

"2252. **Jurisdiction Over Harbors.**—The board of supervisors of each county having a seaport or harbor therein shall appoint three citizens of sufficient skill and knowledge in maritime affairs as a board of pilot commissioners, who shall have jurisdiction over the harbors and passes leading thereto of their respective counties; but the Mayor and Board of Aldermen of the cities of Natchez Vicksburg and Greenville shall have jursdiction of and be harbor commissioners for their respective harbors.

"**Section 1.**—Be it enacted by the Legislature of the State of Mississippi, That Section 2258 of the Annotated Code be so amended as to read as follows: The pilot commissioners, as port-wardens, shall have control of the harbor and port, see that the harbor-

master and pilots perform their duty, and that the regulations are carried out; they shall hold marine surveys and perform such other duties as may be required by the regulations and the character of their office. They shall, as soon as qualified, and at such other timts as may be necessary, examine the pilots acting as such, who have licenses, and all persons who may make application to be licensed as pilots in all matters pertaining to the management of vessels; also, in regard to their knowledge of the channel and harbor where they wish to act. If, upon examination, they be found qualified to take command of all vessels which probably will enter the port, and thoroughly familiar with the channel and currents of the harbor, the pilot commissioners shall first appoint and license the pilots heretofore appointed and licensed, and then such other persons of those qualified as are requisite to perform the duties of pilots at that port, and for a term of two years, but the pilot commissioners shall have power to revoke the license of any pilot or harbor-master for misbehavior, neglect of duty, drunkenness on duty or off duty, or incompetency, or any other cause detrimental to the interest of commerce and navigation. The board of commissioners shall require from each pilot satisfactory bond for the faithful performance of his duties.

"**Sec. 2.**—That Section 2259 be so amended as to read as follows: The board of pilot commissioners shall receive the sum of ten dollars from each pilot and harbor-master whom it examines, appoints and licenses. The fees allowed pilots for compulsory pilotage shall not, in any case, exceed four dollars, nor be less than three and one-half dollars, per foot, and all United States vessels of one hundred and fifty tons burden or less shall not be subject to compulsory pilotage. The pilot commissioners of each city or county may fix the rate of pilotage which shall be

paid by vessels entering and leaving their respective harbors, but in no case shall they fix the rate greater than that now provided by law. They shall also regulate the compensation and fees of harbor-masters and port-wardens.

"**Sec. 4.**—That Section 2261 be so amended to read as follows: After the year eighteen hundred and ninety-four a new applicant cannot be appointed to the position of pilot unless he possess the qualifications prescribed in this chapter, and has served an apprenticeship with the pilots in this State."

It will appear, from the license offered in evidence, that Leech was licensed by the Board of Pilot Commissioners of the Harbor of Natchez "to perform the duties of pilot upon the waters of the Natchez Harbor, and all passes leading into the same, and to and from the sea," for a period of two years from the 12th day of May, 1906.

It will appear, from Section 2252 of the Code of 1892, as amended by the Acts of 1896, that the Mayor and Board of Aldermen of the City of Natchez are Harbor Commissioners for that harbor, and, as such, have jurisdiction over that harbor and the passes leading thereto. The harbor of Natchez is situated on the Mississippi River, and that river is the only "pass" that leads thereto or therefrom. It, therefore, follows that the Board of Harbor Commissioners, or, in this case, the Mayor and Board of Aldermen of the City of Natchez, acted entirely within the power conferred upon them by the Legislature of Mississippi in licensing the accused to pilot on the Mississippi River. These Boards of Pilot Commissioners

evidently undertand the law to mean that they have power to license pilots to pilot in these harbors, and on the Mississippi River, to whatever point, and from whatever point, that river may extend.

The learned Judge of the District Court states in his return that,

> "Even if Mississippi and Louisiana were situated, as to the Mississippi River, as Washington and Oregon are situated as to the Columbia River, and even if Mississippi had the right to license pilots in and out of the bar leading to the sea, the right has never been exercised by the Legislature of Mississippi, and, therefore, the issuance of the license to the accused by the City of Natchez is *ultra vires.*"

We fail to see how that conclusion could have been reached. The language of the statute is perfectly plain that these commissioners are empowered to license pilots on the passes leading to their respective counties, and, in the case of the harbor of Natchez, the only pass leading thereto is the Mississippi River, and that the river leads to and from the sea, and we cannot understand how the Court could draw any line showing just how far a duly licensed pilot of the harbor of Natchez might go on said river, and where his authority would end. It would be impossible, under the law, to find any such limits. As a matter of fact, the language could not be plainer than the language of this statute, which gives the commissioners the authority "to license pilots to pilot vessels on the passes leading to their respective harbors."

The same language, as to the authority of the Pilot Commissioners, is used with reference to the harbors or ports on the seacoast of Mississippi, and the intent of the Legislature in the one case, as to the meaning of the expression "passes," was the same as in the other. It is true, also, of the law of Louisiana relative to the pilots of New Orleans; it is indefinite as to just what point, and from what point, a New Orleans pilot may pilot a vessel. These laws are Revised Statutes 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710 and 2711, to be found in Wolfe's Constitution and Revised Laws of Louisiana, Vol. 2, pages 1245, 1246, 1247 and 1248. We think that, if the Court will read these laws, it will conclude that the Louisiana licensed pilot, duly licensed in accordance with these laws, has authority not only to pilot vessels over the passes, and to and from New Orleans, but can likewise pilot vessels up to any harbor or port situated on the Mississipp River in any State on said river.

An examination of the pilot laws of many States has demonstrated to us that all States, in legislating on the subject of pilotage and in licensing pilots, are equally indefinite in the extent to which pilots may pilot vessels on rivers and waterways upon which such States are located. When a pilot is found competent to pilot vessels, and has been licensed to do so, we have yet to find an instance where there has been specified by law, or by a license, any particular point where his authority ceases.

The Board of Harbor Commissioners of the City of Natchez found the accused competent to pilot vessels in

the Natchez harbor, on the Mississippi River, and to and from the sea, and we submit that, when they licensed him to perform these duties, they did not exceed the authority placed in them by the Legislature of their State.

It would certainly seem that the Legislature, if it had intended to limit the power of these various harbor commissioners in this matter of licensing pilots, and had intended that a pilot when so licensed should pilot to some one point on the Mississippi River north of Natchez, and to some point on the Mississippi River south of Natchez, it would have specified such limitation to the licensing power of this Board of Commissioners. There are no such limits specified in the law of Mississippi, and there are none such specified in the law of Louisiana, or of any other State, as far as we have been able to ascertain.

We submit that, because the State of Mississippi has prescribed no such limits, and because the Court cannot supply them, the harbor commissioners of the harbor of Natchez were not exceeding their powers undtr the law of Mississippi, in issuing to the accused a license to pilot vessels in the harbor of Natchez, on the Mississippi River, and to and from the sea.

We respectfuly submit that the State of Mississippi had authority to license the accused to pilot vessels on the Mississippi River, and to and from the sea, and to and from whatever port on said river bound; that the said State exercised that authority; that the accused was duly licensed and competent to do what he undertook to do;

that the laws of Louisiana, so far as they interfere with his performance of his said duties, under said authority, are inoperative, null and void, and the judgment of the Supreme Court of Louisiana should be reversed and the accused given his liberty.

The foregoing covers the case of plaintiff in error. It may seem to the Court strange that there has been so little reference in this brief to the opinion of the Supreme Court of Louisiana. The reason for this is that the Supreme Court of Louisiana, in its opinion, failed to touch upon the real issues involved in this controversy, and, with all respect to that Court, it may be truthfully said that the opinion does not touch upon the questions involved in this cause.

The Supreme Court of Louisiana, as it clearly appears in its opinion, regards the Mississippi River, or, at least, its sea-end, as Louisiana waters. This is altogether an error, and it is the very error which the Court in the case of the Clymene would have us avoid.

> "The relation of the States as members of the General Government, the fact that they are not separate independencies, and that the navigable waters within their respective limits are subject to common use, must be constantly kept in view."

With respect, it is suggested that the State Court lost sight of this fact, and as to the sea-end of the Mississippi River, considered the State of Louisiana as an independent sovereign.

When this matter was submitted, on briefs, to the Supreme Court of Louisiana (argument not being allowed on writs of *certiorari*), it was not supposed that the Court would take the view that the Mississippi River was a private waterway of the State. The matter was not even referred to in the brief, as there could not possibly be any question about the Mississippi River being a public waterway, subject to common use. If there ever was any doubt about this fact, it was settled for all time by the Act of Congress, which reads:

> "All the navigable rivers and waters in the former territories of Orleans and Louisiana shall be, and forever remain, public highways."
>
> **Act of Congress of March 3, 1811, Ch. 46, 2 Stat. L. 666.**

In the opinion the Court says (printed transcript, page 23):

> "The Supreme Court of the United States, however, held, as soon as the question was presented to it, that the power to regulate commerce, which is conferred by the Constitution upon Congress, 'is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed by the Constitution,' and that, to the extent necessary for such full and complete exercise, it includes jurisdiction over the avenues and vehicles of commerce, and, hence, extends to the navigable waters of the country, irrespective of State lines. Apart from the limitations so established and recognized, the waters lying within the limits of a State are as much subject to its exclusive dominion as the land. It is, therefore, as inconceivable that one State should undertake to regulate the use of the water-

TORN PAGE

> ways of another as that it should assume to regulate the highways by land, and it is equally inconceivable that Congress should assume to vest in one State, with respect to another, a power which, though possessing, it has never itself seen fit to exercise."

The above quotation from the opinion clearly shows the erroneous attitude towards this cause. The State of Mississippi, in authorizing the Harbor Commissioners of the Port of Natchez to issue the license herein to Leech, did not attempt to regulate the **waterways of Louisiana.** It simply empowered and authorized Leech to pilot vessels in the passes leading to, and from, the Harbor of Natchez, and to, and from, the sea, over the waters of the Mississippi River, which is a public, navigable stream, belonging to the nation, and, as such, as much subject to the use of any State bordering thereon as it is to the use of the State of Louisiana. The Mississippi River constitutes the outlet to the sea of every State bordering thereon, and to every State on any navigable stream flowing into the Mississippi River, as well as it does to the State of Louisiana, and the mere fact that, at the sea-end, the Mississippi River is exclusively within the State of Louisiana, confers upon that State no authority to license pilots superior to, or broader than, the authority that every other State bordering on the river, or any of its navigable tributaries, enjoys. To use the language of the learned Judge in the **Clymene case**:

> "Before the adoption of the Federal Constitution she had no jurisdiction whatever beyond her territorial limits. Since that event, she has none (even

> within) except such as Congress has conceded to her. She must be content, therefore, with a voice on the subject, in common with her neighbors who, with her, border on the waters which constitute her and their outlet to the sea."

The Supreme Court of Louisiana refers to the case of **State ex rel. Williams vs. Judge, 36 La. An. 122** (printed transcript, page 27), which held that the Act of Congress of June 1, 1874, authorizing the Secretary of War to assume full control over the particular channel (the South Pass) at the mouths of the Mississippi River, in the course of excavation or improvement by the Government of the United States, did not repeal or supersede the pilotage laws of the State. Plaintiff in error advances no such theory, and makes no such contention, and we fail to find how that case has any bearing on the case at bar, although the Supreme Court of Louisiana, in that connection, says:

> "We are of opinion that the view thus expressed is entirely applicable to the present situation."

In the case cited, Williams held a license as pilot from the United States Local Inspectors of the Port of New Orleans, and acted under it, and was prosecuted for so doing under the statute of 1877, which is here called in question, and defended on the ground that the Act of Congress of 1874 had deprived the State of its pilotage jurisdiction *quoad* the channel or pass referred to in that act. While Leech holds a license similar to the one held by Williams, he did not offer the same in evidence, or

use it to defend in this cause, but solely relies on his license from the Harbor of Natchez. If Leech had defended on the ground that he was duly licensed by the United States Local Inspectors, the **Williams case** would be directly in point, but no such defense is made, and there is no similarity in the contentions of the defendant in the **Williams case** and the defense offered by Leech in the case now before the Court.

A careful reading of the opinion of the Supreme Court of Louisiana in this cause clearly discloses the fact that that Court never appreciated the real contentions in the case, and devoted itself entirely to extraneous matter, and for its authorities referred to legislation and jurisprudence that have no bearing whatever on the questions at issue herein.

Defendant in error has, in its brief, raised the point that the writ of error has been directed to the wrong Court, and that it should have been directed to the District Court, for the reason that the record is now in the latter Court. This contention is met by the fact that, at the time the writ was obtained, the record was in the Supreme Court of the State, to which the writ was directed, and, furthermore, this objection is urged too late, for the reason that this Court now has the record of the whole case before it.

> "A writ will never be dismissed for want of jurisdiction because it is directed to the highest Court in which a decision was or could be had. * * *
>
> "As it is the judgment of the highest Court that is to be re-examined, the Supreme Court should deal

directly with that Court, and, through it, if necessary, with the inferior tribunal."

See **Taylor's Jurisdiction and Procedure of the U. S. Supreme Court, p. 466,** and cases there cited.

We submit that the writ was directed to the proper Court, as it is the judgment of the Supreme Court of Louisiana which is complained of, and which judgment plaintiff in error desires this Court to re-examine.

Defendant in error also contends that the judgment, being a judgment of guilty only, and sentence not having been had, is not a final judgment.

The accused followed the procedure of the Courts of Louisiana. He has exhausted every means permitted to get his liberty. The highest Court of the State has rendered judgment, and its judgment is final. No rehearings are allowed before the Supreme Court of Louisiana in cases coming up on writs of prohibition, *certiorari* and review. Plaintiff has been found guilty of the violation of a statute which, he contends, violates the Constitution and laws of the United States. From that judgment, which is certainly final as to his guilt, ht has properly, we submit, prosecuted this writ, all remedies in the State courts having been exhausted.

Plaintiff in error respectfully submits that the judgment of the Supreme Court of Louisiana should be reversed.

Respectfully submitted,

GEO. H. TERRIBERRY,

Solicitor for Plaintiff in Error.

Supreme Court of the United States

October Term, A. D. 1906.

No. 152.

JOHN LEECH,

Plaintiff in Error,

versus

STATE OF LOUISIANA,

Defendant in Error.

In Error to Supreme Court of Louisiana.

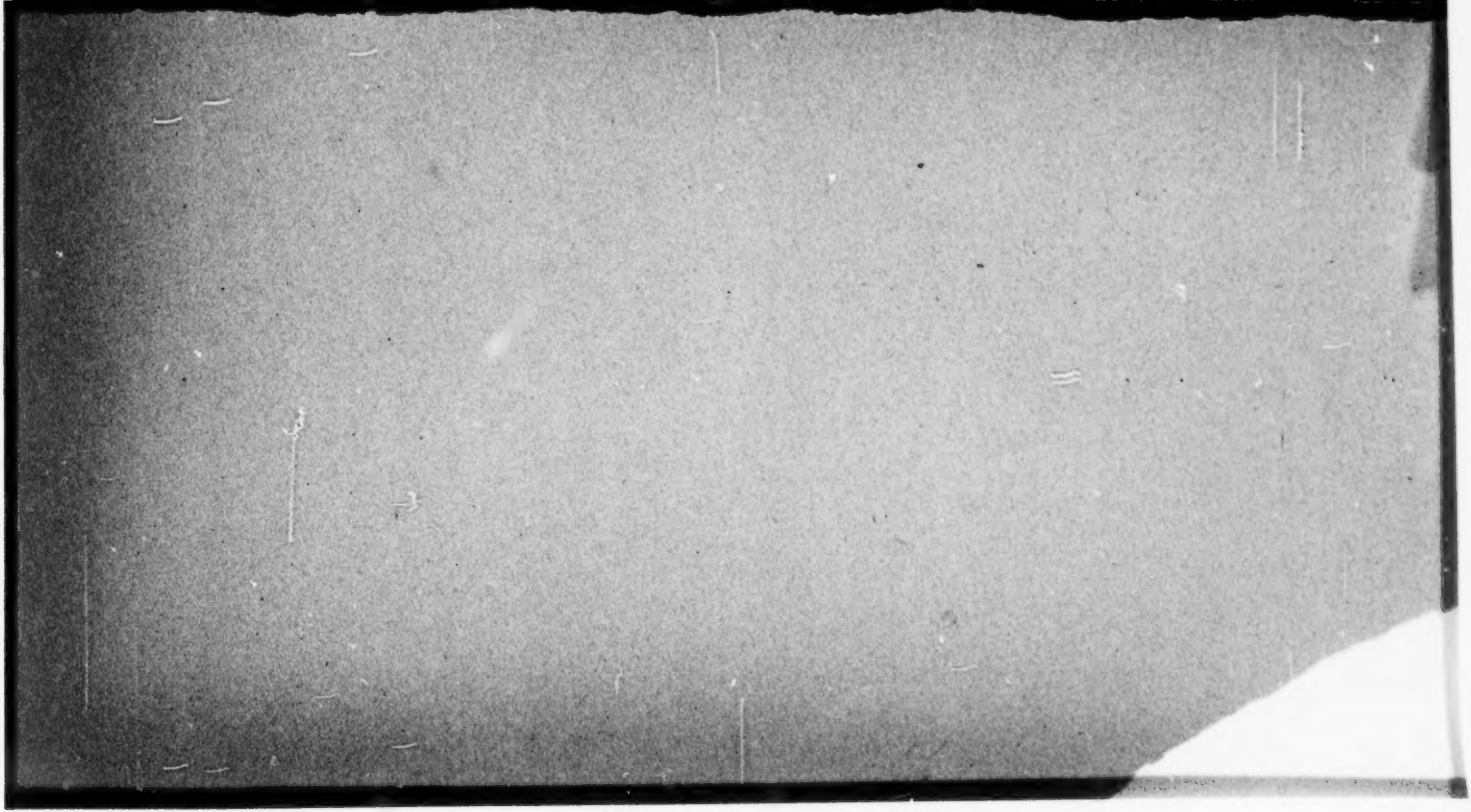
BRIEF OF DEFENDANT IN ERROR.

WALTER GUION,
Attorney General.

N. H. NUNEZ,
District Attorney, Twenty-ninth Judicial District Court.
Counsel for Defendant in Error.

J. R. BECKWITH,

J. G. HAUSER, "The Legal Printer," 620-22 Poydras Street, N. O.



Supreme Court of the United States

OCTOBER TERM, A. D. 1908.

No. 152.

JOHN LEECH,

PLAINTIFF IN ERROR,

VERSUS

STATE OF LOUISIANA,

DEFENDANT IN ERROR.

In Error to Supreme Court of Louisiana.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF RECORD AND ISSUES.

This prosecution originated in the Twenty-ninth Judicial District Court for the Parish of Plecquemines, Louisiana, a court of general jurisdiction over offenses committed in that parish, was commenced by information

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N. B.—Italics in quotations are ours.

(Rec., p. 1) charging unlawful pilotage of a vessel through and over Louisiana piloatage ground without State appointment or license as a pilot, in violation of Section 2 of Act 63 of 1877 *(Acts of 1877, p. 103)*, enacting in its second section:

> "SEC. 2. Be it further enacted, etc., That whosoever shall be guilty of acting or attempting to act as pilot to any vessel, inward or outward bound to and from the port of New Orleans, who is not a duly-licensed branch pilot, shall suffer fine not exceeding the sum of one hundred dollars, or imprisonment not exceeding two months, or both, at the discretion of the Court."

No question is or can be made that the procedure by information and trial by the Court without jury, as shown in the record, was regular procedure under the State law. (Const., Art. 9.) Nor can it be claimed that the information did not disclose an offense under the State statute, with all necessary averments, unless, as contended by the accused, the District Attorney and Court were compelled to deal with statutes of Mississippi when prosecuting offenses against the State of Louisiana within her own jurisdiction. A contention not meriting serious consideration in determining the sufficiency of information.

When arraigned the accused first exhibited a demurrer of unique character, setting up the act of the Federal Congress, adopted March 2, 1837, now U. S. R. S., Sec. 4226, with the averment that the accused held a pilot's

license under the State of Mississippi. (Rec., p. 2.) It would seem if any of the matters set up in this pleading are matters of defense against the information, they should have been presented to the Court in a formal plea instead of by demurrer. This demurrer was properly overruled. (Rec., p. 3.) The accused then made a motion to quash on substantially the same grounds, somewhat elaborated, setting up again a pilot's license alleged to have been granted him by a Board of Pilot Commissioners in the town of Natchez, Miss., and obtained permission to produce evidence in support of his motion.

Evidence was taken. Among other matters the accused presented to the Court and filed in the cause a so-called Mississippi pilot's license, found in the record at page 8. This motion was also overruled. (Rec., p. 8.) Whereupon the accused pleaded "not guilty," was put on trial and found guilty by the Court. (Rec., pp. 8 and 9.)

The accused then moved in arrest of judgment on the same grounds as in motion to quash. This motion was overruled, and the cause stood ready for sentence and final judgment. (Rec., p. 9.)

The accused then notified the Court of his intention to apply to the Supreme Court of the State to consider and review the proceedings in the cause, under the discretionary power conferred on that Court in Article 94 of the State Constitution, in cases where there was no appeal or writ of error to the lower Court, as a matter of right.

The following articles of the State Constitution are involved in the contention of this cause:

> "ART. 9. In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury; provided, that, cases in which the penalty is not necessarily imprisonment at hard labor or death, he shall be tried by the Court without a jury or by a jury less than twelve in number, as provided elsewhere in the Constitution." * * *

The article referred to is Article 116, and provides for the trial of such cases without a jury.

Article 85, after defining the jurisdiction of the Supreme Court in civil causes, provides that its jurisdiction shall extend "* * * to criminal cases on questions of law alone, whenever the punishment of death or imprisonment at hard labor may be inflicted, or imprisonment exceeding six months is imposed." * * *

> "ART. 94. The Supreme Court shall have control and general supervision over all inferior Courts. The Court, or any Justice thereof, shall have power to issue writs of *certiorari*, prohibition, mandamus, *quo warranto*, and other remedial writs."

On this notice the District Court suspended sentence on the verdict to await the action of the Supreme Court on the proposed application, entering an order that the accused be released "*on his bond herein until notified to appear for sentence of the Court.*" (Rec., p. 9.)

From that day until this there has never been a final judgment on the recorded verdict of guilty in the District Court, raising a serious question whether this Court can hear the cause under present writ of error, even if it

had been addressed to the District Court for the Parish of Plaquemines, that certainly being the highest Court in the State having power to render final sentence and judgment on the verdict.

The State Supreme Court, when appealed to and asked to interfere *pendente lite*, acted in the exercise of a purely discretionary power of revision and direction, and, when so appealed to, refused to interfere with the lower Court or its verdict, and has not now, and never has had, the power to render a final judgment or sentence on the recorded verdict of guilty.

The overruled motion in arrest of judgment was in writing, is in the transcript (Rec., pp. 12, 13), and seems to have been spread upon the minutes of the lower Court. This appears to have been certified by the Clerk of the District Court as part of the return of the Judge of the District Court to the order addressed to him by the State Supreme Court, as shown in the record. (Rec., p. 17.)

This application to the Supreme Court for revision was by petition, given in full in the transcript at page 15 *et seq.*

The matters complained of are substantially the same as urged in the lower Court on the demurrer, motion to quash, and in arrest of judgment; Leech, the accused, averring himself in that petition to be a *resident of the City of New Orleans.*

Upon this petition, and on the order of the Chief Justice of the Supreme Court (Rec., p. 18), a command was sent to the Judge of the District Court, with provisional prohibition until the further order of the Supreme Court.

The Judge of the lower Court made return to the order addressed to him, the District Attorney for the district appearing in behalf of the Judge of the lower Court and of the State.

The application was heard in the Supreme Court in open session on May 27, 1907, and the Court, all of the Justices concurring, refused the relief prayed for, or to interfere with, or revise the action of the lower Court, or to disturb the verdict of guilty in that Court, dismissing the proceedings and vacating the original order of temporary prohibition. (Rec., p. 22)

The Court delivered an elaborate written opinion, printed in full in the record at page 22 *et seq.* The case is also reported in 119 La. Rep. 522 (44 So. 285).

There was a petition for rehearing, refused by the Court, and the lower Court left free to render judgment on the verdict in the cause. In an attempt to stay the action of the lower Court the accused sued out this writ of error, directed, not to the District Court of the Parish of Plaquemines, where the record of the verdict existed but to the Supreme Court of the State, and prays this Court to revise or reverse the refusal of the Supreme Court of Louisiana to use its discretionary power of review, and reverse the action of the lower Court. A seemingly doubtful power of this Court.

The assignment of errors (Rec., p. 30) seems to confuse matters not cognizable by this Court in error to State Courts with questions possibly cognizable under a properly addressed writ of error.

The first assignment seems to be that the Supreme Court and the District Court erred in not declaring the act under which accused was convicted unconstitutional for repugnancy to the State Constitution, and can only relate to or raise that question. There is apparent absence of any Federal question in this assignment of errors.

The second assignment of errors is confusing, and is apparently intended to present a question ordinarily cognizable by this Court, in error to state courts, when brought up by properly directed writs of error.

The complaint seems to be that the State Court erred in not adjudging that the act under which accused was convicted is invalid, in so far as it imposes a penalty for piloting vessels in Louisiana waters, on Louisiana pilotage ground, and within its municipal jurisdiction, without due appointment and license from the State; for the reason that the act under which the accused was convicted is repugnant to the Act of Congress of 1837 and the commerce clause of the Federal Constitution.

The third assignment of error seems to be that the Court, as a matter of fact, erred in deciding that the Mississippi River between its mouth and the City of New Orleans *is not the boundary line between the States of Louisiana and Mississippi.*

The Federal question intended to be presented seems to be whether the Act of Congress of 1837 can be so construed as to prohibit the State of Louisiana from enact-

ing or enforcing the act of its Legislature under which Leech was prosecuted, found guilty, and is now awaiting sentence.

The first question to be considered by this Court is whether it can hear this cause under this writ of error as sued out by Leech.

Section 709 of the United States Revised Statutes, under the established jurisprudence and construction given it by this Court, only warrants a writ of error to state courts when there has been a final judgment and decree in the cause in the highest court of the State in which the cause can be heard and determined. It is to that court that a writ of error must be addressed, even though that Court, in rank, may not be the highest court in the State.

The District Court of the Parish of Plaquemines is the highest Court in Louisiana in which Leech could be tried on the charge against him, and is the only court in which there can be final judgment and sentence upon the verdict in the cause.

The Supreme Court of the State has refused to interfere with the trial Court, as shown in its elaborate written opinion. (Rec., p. 22 *et seq.*).

The jurisdiction of the State Supreme Court to interfere with or revise the action of inferior Courts, under the Constitution, is purely discretionary, both in terms of the Constitution and under the settled jurisprudence of the State.

The Louisiana jurisprudence on the subject is carefully set out in *Marr's Criminal Jurisprudence of Louisiana*, Sections 520, 521, page 899 *et seq.*, where all of the authorities are cited and carefully and most accurately dealt with.

The State Supreme Court refusing to act on, or interfere with, the trial Court, discharged its rule of temporary prohibition, and abandoned all control over the cause, leaving the lower Court free to proceed to final judgment in an unappealable cause.

It does not seem within the province or power of this Court to compel the Supreme Court of Louisiana to overrule its exercise of its purely discretionary power and recall the case into court after its refusal to interfere with the lower Court.

It seems clear that the trial Court in Plaquemines Parish is the highest Court in the State in which final sentence and decree can be made and entered, and the Court to which the writ of error should have been addressed.

This is not the first cause in which the Louisiana Supreme Court has considered or dealt with this statute and most of the questions involved. In *State ex rel. Williams vs. Judge*, 36 An. 122, the Supreme Court of the State was appealed to, by the same process and under the same power of control over subordinate Courts, to consider the identical statute under which the plaintiff in error is prosecuted in this case. Williams was convicted

under the same statute and in the same District Court for the Parish of Plaquemines, and applied to the Court for *certiorari* process, alleging amongst other reasons for the supervising action of the Court that the act under which he was prosecuted was repugnant to the coastwise navigation laws of the United States, and also repugnant to certain acts of Congress relating, locally, to the various mouths and passes of the Mississippi River at its entry into the Gulf of Mexico, at that time being under improvement by the General Government in an effort to widen and deepen the channel. The Court in that case considered elaborately and carefully both the Federal and State legislation involved, and adjudged the Act of 1877 to be valid, and the conviction of Williams proper and correct in all respects.

The first question involved is the question of jurisdiction. Can this Court deal with the cause under the present writ of error. We submit that the record discloses no final judgment, the cause standing on a verdict of guilty with no final sentence.

The action of the State Supreme Court was manifestly and purely the exercise of its judicial discretion, and its action in refusing to interfere with the trial Court is apparently not reviewable here, but left the trial Court the highest and only Court with power to render final judgment.

It seems that, if Leech is entitled to a writ of error, the writ should have been sent to the District Court of the

Parish of Plaquemines, where he was prosecuted, and not even to that Court until after its final sentence and judgment.

This seems settled by the construction of Section 709 of the United States Revised Statutes, and the twenty-fifth section of the Judicial Act of 1789, both being substantially alike in that requirement.

In order to be reviewable, the judgment of a State Court must be the final judgment of the highest court having jurisdiction of the cause.

> *Pierce vs. Hatch*, 205 U. S. 340-344; *Cotton vs. Harii*, 29 Sup. Ct. Rep. 85-87 (present term). U. S. R. S., 709; *Gregory vs. McVeigh*, 23 Wall. 294; *Pollegs vs. Black River Co.*, 113 U. S. 81; *Gerlston vs. Hoyt*, 91 U. S. 143-146; *McComb vs. Commissioners*, 91 U. S. 1; *Parcels vs. Johnson*, 20 Wall. 382; *Green vs. Van Buskirk*, 3 Wall. 449; *Fisher vs. Perkins*, 122 U. S. 522; *Downham vs. Alexandria*, 9 Wall. 659; *Atherton vs. Fowler*, 91 U. S. 143; *Martin vs. Hunter*, 1 Wheat. 304; *Houston vs. Moore*, 3 Wheat. 433; *Gibbons vs. Ogden*, 6 Wheat. 448.

The jurisprudence of this Court on this question has been settled and uniform down to the present time, and seems beyond all controversy.

If this Court can entertain this cause under the present writ of error, dealing with the questions involved, we respectfully submit that the law applicable to the cause is correctly stated in the opinion of the State Supreme Court in refusing to interfere with the trial Court.

First. The question of the sufficiency of the information, tested by the State law, if the statute is not void for some Federal reason, is not reviewable in this Court under the writ of error, being a purely State question.

Second. The question whether the Mississippi River from the sea to the southern boundary of the State of Mississippi, more than three hundred miles, is entirely within the territory of Louisiana, is a matter of judicial cognizance in this Court and all others courts in the United States, and is not debatable.

Third. That the course of all vessels coming from the sea to New Orleans, and going from that port to sea, is over and through what are entirely inland waters of Louisiana cannot be questioned; nor that the State of Louisiana has all sovereign municipal dominion over that water, its shores and bottoms, not surrendered to the Federal Government.

Fourth. The trial Court, as well as the State Supreme Court, doubted the capacity of the Natchez authorities to grant or issue to Leech a pilot's license of the character set up by him in the trial Court. We submit that the statutes of Mississippi do not confer any such authority on the Natchez officers, and show clearly that the intention of the Mississippi Legislature was not to confer any such authority on them to issue licenses to their pilots to invade Louisiana waters and defy its penal laws.

It seems clear that, in issuing the license to Leech in the form and terms contained in the paper offered as a license, the Natchez authorities acted *ultra vires*.

Plaintiff in error in the transcript has not given the Court a copy of the statutes of Mississippi on which he relies. It seems that there was some amendment of the Mississippi pilot laws as compiled in the Revised Statutes or Code referred to in the transcript, accomplished by an act of 1896.

Chapter 128, Acts of 1896, p. 140.

We give below what we believe to be the statutes of Mississippi in force at the time of Leeds's alleged license.

Sections 2252, 2258, 2259 and 2261 of the Mississippi Code seem to be the only statutes having any bearing upon the issues here.

We quote the four sections, the last three sections amended, as above referred to:

> "2252. JURISDICTION OVER HARBORS—The Board of Supervisors of each country having a seaport or *harbor therein* shall appoint three citizens of sufficient skill and knowledge in *maritime affairs* as a Board of Pilot Commissioners, who shall have jurisdiction over the harbors and passes leading thereto of their respective counties; *but the Mayor and Board of Aldermen of the Cities of Natchez, Vicksburg and Greenville shall have jurisdiction of and be Harbor Commissioners for their respective harbors.*"

Acts of 1896, page 140:

> "SECTION 1. Be it enacted by the Legislature of the State of Mississippi, That Section 2258 of the Annotated Code be so amended as to read as follows: '*The Pilot Commissioners, as Port Wardens, shall have control of the harbor and port, and see that the harbor-master and pilots perform their*

duty, and that the regulations are carried out; they shall hold marine surveys and perform such other duties as may be required by the regulations and the character of their office. They shall, as soon as qualified, and at such other times as may be necessary, *examine the pilots acting as such, who have licenses, and all persons who may make application to be licensed as pilots in all matters pertaining to the management of vessels; also, in regard to their knowledge of the channels and harbor where they wish to act. If, upon examination, they be found qualified to take command of all vessels which probably will enter the port, and are thoroughly familiar with the channels and currents of the harbor, the Pilot Commissioners shall first appoint and license the pilots heretofore appointed and licensed,* and then such other persons of those qualified as are requisite to *perform the duties of pilots at that port,* and for a term of two years; but the Pilot Commissioners shall have power to revoke the license of any pilot or harbor-master for misbehavior, neglect of duty, drunkenness on duty or off duty, or incompetency, or any other cause detrimental to the interest of commerce and navigation. The Board of Commissioners shall require from each pilot satisfactory bond for the faithful performance of his duties.'

"SEC. 2. That Section 2259 be so amended as to read as follows: 'The Board of Pilot Commissioners shall receive the sum of ten dollars from each pilot and harbor-master whom it examines, appoints and licenses. The fees allowed pilots for compulsory pilotage shall be so adjusted as not to burden shipping, and shall not in any case exceed four dollars, nor be less than three and one-half dollars per foot; and all United States vessels of one hundred and fifty tons burden or less shall not be subject to compulsory pilotage. *The Pilot Commissioners of each city or county may fix the rate of pilotage which shall*

be paid by vessels entering and leaving their respective harbors, but in no case shall they fix the rate greater than that now provided by law. They shall also regulate the compensation and fees of harbor-master and port-wardens.'

* * * * * * *

"SEC. 4. That Section 2261 be so amended to read as follows: 'After the year eighteen hundred and ninety-four a new applicant cannot be appointed to the position of pilot unless he possesses the qualifications prescribed in this chapter and has *served an apprenticeship with the pilots in this State.*"

Your Honors will, therefore, see that the Mayor and Board of Aldermen of Natchez are appointed Pilot Commissioners for their harbor and port. They, as Pilot Examiners, examine applicants:

"If, upon examination [Section 2258 says], they be found qualified to take command of all *vessels which probably will enter the port, and are thoroughly familiar with the channels and currents of the harbor*," etc., only such applicants shall be licensed.

Section 2259, as amended, gives these Pilot Commissioners or Port Wardens the right

"to fix the rate of pilotage which shall be paid *by vessels entering and leaving their respective harbors.*"

Every line of these statutes show a clear intention on the part of the Mississippi Legislature to make this law apply only to vessels entering and leaving the ports of Mississippi.

We can find nothing in this legislation conferring on the Natchez officials authority to appoint Leech to pilot in the inland waters of Louisiana or to confer on him any warrant to defy the laws of Louisiana within its boundary lines. The trial Court so held. The Supreme Court, in its opinion, expresses conviction that the statutes of Mississippi were never intended to stock Louisiana inland waters with Mississippi-appointed pilots, or to provoke conflicts of authority between the States by that character of invasion. Nor can we find any warrant in the Mississippi statutes for the insertion of the conditions contained in the Leech license, particularly the words "upon the waters of Natchez harbor and all passes leading to the same and to and from the sea."

If the State of Mississippi has the power and right to regulate pilotage in Louisiana, every State bordering on the Mississippi River, from the head of its navigable waters to the sea, can swarm Louisiana pilotage grounds with pilots not amenable to Louisiana laws or regulations.

The Louisiana Supreme Court did not, nor did the trial Court in its rulings on the demurrer, motion to quash, or on motion in arrest of judgment, commit any error in respect to this issue.

There is nothing in the Act of 1787, or the Act of 1837, that in any way impairs the right of Louisiana to adopt or enforce an act of its Legislature, on which Leech was prosecuted and convicted.

The permission of Congress to States to legislate on the subject of pilotage is given in the Act of 1787. There can

TORN PAGE

be no conflict between that statute and the State statute under which Leech was convicted.

The only Federal legislation to be dealt with is the Act of 1837, which plaintiff in error insists either kills or prohibits the adoption of the State legislation involved in the prosecution of Leech.

This issue involves the determination of the political relation of the State to the Federal Government and the control and dominion over inland waters still left and residing in the State. This was early brought into question and settled by this Court in the cases hereafter cited:

In order to deal with the question of the possible disastrous operative effect of the Mississippi laws within the boundaries of our State, a statement of Louisiana pilotage laws and the delineation of the exact limit and locality of the territory invaded and involved is necessary.

The territory sought to be invaded is the territory between the head of the several passes, constituting the real mouth of the Mississippi River, and a five-mile limit seaward outside of the sea end of the several passes, including, of course, the water of the several passes. We are not aware that this State has ever attempted to establish pilotage laws on the Mississippi River affecting any part of the river above New Orleans.

This Court will take judicial cognizance of the conditions and environment of this territory between the sea and the head of the passes. The condition and surroundings of pilots, compelled to spend their lives there, are

infinitely worse than is so graphically described by the this Court in its opinion in *Ex parte McNeil*, 13 Wall. 236 *et seq.*

The territory adjacent to all three of the passes covered by the Louisiana pilot system is saltsea marsh, storm-swept in the winter, insect- and cyclone-harried in the summer, subject to life-endangering overflow, tidal and storm wave, extremely unhealthy, and, where there has been no artificial filling, the pilots are compelled to live in houses supported by piles above the reach of tidal overflow. A locality where they cannot make homes for their families, remote from timely help in sickness or in danger, practically in all things isolated from all the comforts, advantages and amenities of civilization, cutting them off from all other occupations or means of livelihood.

The problem that the State Legislature was compelled to solve was to create a system of pilotage that would establish a corps of skilled pilots in that territory, adequate in number, skill and endurance to serve commerce, and equipped to save life and vessels in distress on that part of our coast. That position was solved in the adoption of the present code of pilotage laws, carefully compiled, with all amendments in Wolff's Revised Statutes of Louisiana, Sections 2686 *et seq.*, pages 636 *et seq.*

Abstract of the Pilotage Laws of Louisiana.

Our references in this abstract are to the Revised Laws of Louisiana, as compiled and annotated by S. Wolff.

Section 2686 provides that no person shall be appointed a pilot unless he is a lawful voter of the State of Louisiana, and recommended to the Governor by the Board of Examiners as being duly qualified as a branch pilot. Amended by Act 99 of 1880, Section 2, Wolff's Statutes, 641, making the further provision that no person shall be appointed branch pilot at the mouth of the Mississippi River unless a qualified elector of the State, and unless he shall have actually served in a pilot-boat at the mouth of the Mississippi River for the space of twelve months preceding the date of his application, and shall have been recommended to the Governor by the Board of Examiners as being duly qualified as a branch pilot for the Port of New Orleans.

Section 2687 provides for a Board of Examiners to be appointed by the Governor, to be composed of three persons to be selected from the branch pilots. Amended by Act 99 of 1880, Section 6, making their term four years, and subjecting them to the discipline of the Governor, and making it their duty to recommend to the Governor for appointment persons deemed fit for branch pilots over the bar in the passes of the Mississippi River.

Wolff's Revised Statutes, 641.

Section 2688 provides that every branch pilot, before he takes upon himself the execution of his duty, shall give bond to the Governor of the State, with two sufficient sureties, in the sum of one thousand dollars. Amended by Act 99 of 1880, Section 3, to require a bond of $2,000.

Section 2689 provides that, whenever any branch pilot shall refuse or neglect to go on board of any ship or vessel when called upon by signal, or otherwise, if such boarding be practicable, shall be suspended from his duties as a pilot for the term of five years, and shall, moreover, be liable to be fined in the sum of three hundred dollars, and, in default of payment, shall suffer imprisonment for the term of three months. This section is severe in its enactment, compelling pilots to board vessels in high, dangerous seas and in storms, and to board plague-infected vessels, at the peril of their lives.

Section 2690 provides for extra service and compensation where a branch pilot shall perform extra services or salvage services, the amount to be agreed upon between the pilot and the master, and, if such agreement is possible, to be determined by the master and wardens of the Port of New Orleans.

Section 2691 prescribes the duties of the examiners and the penalties for neglect or refusal to perform their duties.

Section 2692, as amended by Act 90 of 1880, Section 4, given in Wolff's Digest, page 641, prescribes the remuneration and penalty when outward-bound vessels carry pilots to sea.

Section 2693 provides that it shall be the duty of a pilot, when going on board of any outward-bound ship or vessel at the boarding-station, to remain on board of said vessel until she crosses the bar, unless permission is

given by the master of the vessel to the pilot to absent himself from the vessel. This enactment was made necessary by the fact that vessels frequently grounded before crossing the bar and remained grounded for days.

Section 2694 provides what signals pilot-boats shall carry and that all pilot-boats at the mouth of the Mississippi River shall cruise seaward on a radius of five nautical miles from the several entrances to the river.

Section 2695 provides that no pilot shall board any inward-bound vessel for the purpose of piloting such vessel in, except from the regular pilot-boats on their stations, and that any pilot boarding any inward-bound vessel in a small boat from the shore not belonging to or attached to the pilot-boats for the purpose of piloting such vessel in, shall be subject to a fine of one hundred dollars, to be paid to the Charity Hospital, of New Orleans.

Section 2696 relates to the absence of branch pilots from the pilotage ground, at the mouth of the Mississippi River, without permission from the Governor, and was amended, with a penalty attached, by Act 99 of 1880, Section 5, Wolff's Statutes, 641.

Section 2697 requires every person offering to pilot a ship on pilotage ground to exhibit to the commander of the vessel his license as branch pilot, and, upon his refusal or neglect so to do, when demanded, he shall not be entitled to any remuneration for his services.

Section 2698 makes it the duty of the Board of Examiners to report to the Governor any neglect of duty,

drunkenness, carelessness, habitual intemperance, incompetency or general bad conduct, on the part of any branch pilot, showing that such branch pilot ought to be removed or suspended, and making it the duty of the Governor if, upon due inquiry, he finds the report well founded, to revoke or suspend the commission of such pilot.

Section 2699 provides that the master of any vessel having cause to complain of the misconduct of any pilot while on duty on board of a vessel being piloted may go before the master and wardens of the Port of New Orleans and state, under oath, the cause of his complaint, making it the duty of said master and wardens to forthwith transmit a copy of the same to the Governor, who shall cause a thorough investigation to be had of the cause of complaint by the Board of Examiners, and, upon his approval or rejection of the award, the Governor may either acquit, remove or suspend the pilot so accused.

Section 2701 provides that the number of bar pilots for the Port of New Orleans shall not be less than thirty (as amended by Act 11 of 1880, page 9).

Section 2702 requires every branch pilot at the mouth of the Mississippi River to be the owner or part owner of at least one decked pilot-boat of not less than fifty tons burden, and that he keep such boat exclusively employed as a pilot-boat, and provides that every branch pilot not owning or employing a pilot-boat of this character shall be suspended from his office by the master and wardens of the Port of New Orleans, who shall report

the case to the Governor, who may withdraw the commission or license of such branch pilot.

Section 2703 (as amended by Act 11 of 1890, Section 2, page 9) establishes the rate of pilotage that may be demanded and received by bar pilots at the mouth of the Mississippi River.

Section 2704 prohibits any tavern, grog-shop, billiard-room or house of public entertainment in Belize, Southwest Pass, or any other station for pilots, or within three miles of such station, unless the person applying for such license shall be recommended in writing by a majority of the branch pilots, and provides a penalty for the establishment of any such grog-shop or tavern, etc., without such consent.

Section 2705 enacts that, if any vessel, inward or outward bound, to or from the Port of New Orleans, shall employ as a pilot a person who is not a duly licensed branch pilot, when a licensed branch pilot offers his services, the vessel and her captain and owners shall forfeit the sum of one hundred dollars, with a privilege on the vessel, to be recovered for the benefit of the Charity Hospital, of New Orleans.

Section 2706 provides that vessels, inward or outward bound, to or from the Port of New Orleans, refusing to take a branch pilot when one offers, shall be liable to the pilot thus offering for half pilotage, recoverable, with privilege on the vessel, in any Court of competent jurisdiction.

Section 2707 provides that the duly licensed branch pilots at the mouth of the Mississippi River may, for the furtherance of their own interests, form themselves into one or more voluntary organizations.

Section 2708 relates to the Board of Examiners, and prescribes the time when they shall meet, the notice to be given of the meeting, where they shall hold examinations, that they shall be open to all who may wish to attend, the examiners to decide on the qualifications for the office of branch pilots for the Port of New Orleans, as amended by Act 63, E. S. 1877, page 103, which provides, in the second section, that whoever shall be guilty of acting or attempting to act as pilot on any vessel inward or outward bound, who is not a duly licensed branch pilot, shall suffer a fine not exceeding the sum of one hundred dollars, or imprisonment not exceeding two months, or both, at the discretion of the Court. This is the statute upon which the relator was convicted in this case.

Section 2709 provides that any branch pilot piloting any vessel safe from sea, and giving satisfaction, shall have a preference in piloting the same vessel out to sea again, provided he or any pilot from the same association be in readiness and offer his services before the vessel gets below the boarding-station, at the head of the passes, and provides, in case of refusal, that the pilot shall have a privilege on the vessel for a penalty of one hundred dollars for the benefit of the pilot offering his services.

Section 2710 regulates the privileges on vessels, and when they shall terminate.

Section 2711 gives the Governor the power of removal of the members of the Board of Examiners.

Act 99 of 1880, page 126, provides:

Section 1 makes it the duty of the Board of Examiners to report vacancies occurring by death, resignation or otherwise among the branch pilots, and to call a meeting of the Board of Examiners for examination of candidates to fill such vacancy.

Section 2 provides that no person shall hereafter be appointed a pilot for the entrance to the Mississippi River unless he shall have been a duly qualified elector of the State, and shall have actually served on a pilot-boat at the mouth of the Mississippi River twelve months next preceding the date of his application, and requires recommendation to the Governor by the Board of Examiners as being duly qualified as a branch pilot for the Port of New Orleans.

Section 3 provides that every branch pilot, in order to entitle him to act as such, shall give a bond to the State, with two sufficient sureties, residents of New Orleans, in the sum of two thousand dollars, subject to the approval of the master and wardens of the Port of New Orleans.

Section 4 provides for penalty and remuneration in the case of an outgoing vessel carrying a pilot to sea, and for the return of the pilot to this port, or to the port most convenient to this port.

Section 5 provides that no branch pilot shall be allowed to leave the station for more than seven consecutive days, unless he shall have obtained leave of absence from the Governor of the State, upon the written recommendation of the Board of Examiners, and enacts a penalty of fifty dollars for a violation of the provisions of the section.

It must be manifest to the Court that the Legislature fully comprehended the undesirable character of employment of a branch pilot at the mouth of the Mississippi River, the necessity of obtaining and maintaining an adequate force of pilots thoroughly tested as to their qualifications and experience, and the necessity, in the interests of commerce, of rigid discipline, for the faithful performance of duty, to be enforced by severe penalties in case of infraction of statute regulations or neglect or disregard of duty.

The experience of more than half a century has demonstrated that our pilotage laws are not too severe in regulating pilots and pilotage. That the penalties denounced for violation are not too severe to insure the safety of vessels, lives and commerce, and stand as the deliberate expression of the legislative will of Louisiana, founded upon public policy and experience, and binding upon every person within its dominion and boundaries with the full import of ordained law, and will so stand until repeal or modification by our own Legislature or by the action of Congress, within its power to regulate

commerce, Congress being always subject to the limitations contained in Section IX, Article 1, of the Federal Constitution, providing that:

> *"No tax or duty shall be laid on articles imported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another, nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another."*

POWER OF STATES TO REGULATE PILOTAGE WITHIN THEIR LIMITS, AND HOW FAR AFFECTED BY THE ADOPTION OF STATE PILOTAGE LAWS BY CONGRESS.

The determination of the question of the right of Mississippi to invade Louisiana with its laws, officers or pilots, to the extent of overthrowing our pilotage system, demands a judicial determination of the character and extent of the sovereignty of our own State over its territory within its own limits and boundaries for all political and governmental purposes, both as to land and waters, entirely within its limits.

From the point where the southern boundary of Mississippi touches the east bank of the Mississippi River to its mouth in the Gulf of Mexico, the waters of the Mississippi River *are entirely within the limits and dominion of the State of Louisiana,* subject to its complete dominion for all ordinary governmental purposes and control, and entirely subject to the operation of its laws, unless our State has by treaty divided its sover-

eignty with some other State or outside sovereignty. We have no such treaty with Mississippi, and, under the restrictions of the Federal Constitution, can make no such treaty, or surrender.

The only authority that can interfere with this State in the control of this long stretch of inland Louisiana water is the Federal Congress. The Federal Government, through Congress, can only act or interfere with this water and dominion to the extent of assuming such direction over the use of the river *as may be necessary to regulate its use as a water-way used in commerce between the States and foreign nations, and can assume no other dominion or control,* nor can Congress delegate *that limited power or control to be exercised by Mississippi or any other State or nation.*

The nature, extent and character of this control of the inland waters of the States were early the subject of inquiry and adjudication by the Federal Supreme Court. The first prominent case was *Gibbons vs. Ogden,* 9 Wheat. 1. (The report covers 240 pages; our citation will be from the particular page of the report referred to.) The opinion of the Court was delivered by Chief Justice Marshall.

The case arose over a legislative effort of the State of New York to regulate navigation and commerce in the waters of New Jersey and the states bordering on Long Island Sound, and, in that respect, is very much

like the case at bar. On page 196 the Court, in *Gibbons vs. Ogden*, defines the power to regulate commerce, stating that:

> *"It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution."*

On page 197 the power of Congress is further defined:

> *"The power of Congress, then, comprehends navigation within the limits of every State in the Union, so far as that navigation may be, in any manner, connected with 'commerce with foreign nations, or among the several States, or with the Indian tribes.'"*

On page 199 the Court, referring to the power of the States, said:

> "But, *when a State proceeds to regulate commerce with foreign nations, or among the several States, it is exercising the very power that is granted to Congress."*

On page 207 the Court comments on and construes the Act of August 7, 1789 (now Section 4235, U. S. R. S.), as follows:

> "Although Congress cannot enable a State to legislate, Congress may adopt the provisions of a State on any subject. When the Government of the Union was brought into existence, it found a system for the regulation of its pilots in full force in every State. The act which has been mentioned adopts this

system and gives it the same validity as if its provisions had been specially made by Congress. But the act, it may be said, is prospective also, and the adoption of laws to be made in future presupposes the right in the maker to legislate on the subject.

"The act unquestionably manifests an intention to leave this subject entirely to the States until Congress should think proper to interpose; but the very enactment of such a law indicates an opinion that it was necessary; that the existing system would not be applicable to the new state of things, unless expressly applied to it by Congress. But this section is confined to pilots within the 'bays, inlets, rivers, harbors and ports of the United States,' which are, of course, in whole or in part, also within the limits of some particular State. The acknowledged power of a State to regulate its police, its domestic trade and to govern its own citizens may enable it to legislate on this subject to a considerable extent; and the adoption of its system by Congress, and the application of it to the whole subject of commerce, does not seem to the Court to imply a right of the States so to apply it of their own authority. But the adoption of the State system being temporary, being only 'until further legislative provision shall be made by Congress,' shows conclusively an opinion that Congress could control the whole subject, and might adopt the system of the States or provide one of its own."

The next case where the commerce clause of the Constitution was drawn in question was *Wilson vs. Blackbird Creek Marsh Company*, 2 Peters, 245. The State of Delaware, by legislation, authorized the defendant company to erect a dam across Blackbird Creek, a stream navigable from the sea by small vessels. Wilson and his

associates were the owners of a small vessel, sailing under Federal license in the coastwise trade. Wilson attempted a voyage up Blackbird Creek, wholly within the State of Delaware. He encountered the dam, cut it down and sailed up the creek to his destination. The defendant company sued him in trespass in the State Courts for wrecking the dam, and he was condemned in damages by the Delaware Courts. He sued out a writ of error to the Federal Supreme Court on the ground that the commerce clause of the Constitution had been violated by the Delaware Legislature in authorizing the dam, and that the legislation was, therefore, void.

The organ of the Court was again Chief Justice Marshall, who held that, as Congress had *not acted or prohibited* the closing of the creek, Delaware had full legislative power over the waters within her own territory, and could lawfully close the creek from navigation until Congress acted, and confirmed the decree of the Delaware State Court.

The next case involving the question of the sovereign power of the States over State waters, as limited by the commerce clause of the Federal Constitution, was *Gilman vs. Philadelphia*, 3 Wall. 713. The Schuylkill River empties into the Delaware, and through that river leads to other States and to the ocean. The Legislature of Pennsylvania authorized the City of Philadelphia to erect a low bridge without a draw at Chestnut Street, too low to allow masted vessels to pass above the bridge. Gilman and others owned wharves and warehouses above

the site of the proposed bridge on the Schuylkill River, and were carrying on ocean and interstate trade on vessels lading and unlading at their wharves. The erection of the bridge would cut them off from the use of seagoing vessels and subject them to great loss in the use of their property. They resorted to the Courts, claiming that the act of the Legislature authorizing the construction of the bridge at Chestnut Street was repugnant to the commerce clause of the Federal Constitution as an obstruction to the free use of the Schuylkill River by vessels in the coasting trade between States, and to and from the ocean, and rendered their wharves and appliances above the bridge comparatively useless.

The Supreme Court held that, as Congress had not legislated on the subject of that particular inland water of Pennsylvania, that State had the right to act, and that its dominion over its inland water was adequate to make the act authorizing the construction of a low bridge without a draw valid, and refused to enjoin its construction. The bridge was constructed as designed, and exists at this time.

In the opinion in the case the Court comments on the pilotage laws of the States as regulations of commerce, and on page 727 says:

> "Pilotage laws are regulations of commerce, but if a State enact them in good faith, and not covertly for another purpose, there is no conflict with the power to regulate commerce permitted to Congress by the Constitution."

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expressly affirming *Pollard's Lessees vs. Hagan,* 3 Howard, 212-230, and citing, with approval, from the opinion in that case the following:

> "The right of eminent domain over the shores and the soil under the navigable waters, for all municipal purposes, belongs exclusively to the States within their respective territorial jurisdictions, and they, and they only, have the constitutional power to exercise it. * * * But in the hands of the States this power can never be used so as to affect the exercise of any national right of eminent domain or jurisdiction with which the United States have been invested by the Constitution. For, although the territorial limits of Alabama have extended all her sovereign power into the sea, it is there, as on the shore, but municipal power, subject to the Constitution of the United States and the laws which shall have been made in pursuance thereof."

The same doctrine was held in *Steamship vs. Joliffe,* 2 Wall. 450. The *Joliffe case* was decided in 1864. There was a strong dissent in the Court, creating a strong feeling that the questions involved might not be permanently settled by that adjudication. This feeling led to the Congressional action cited and construed in *Ex parte McNeil,* setting the question at rest. This legislation on the subject is so fully set forth and dealt with in *Ex parte McNeil,* 13 Wallace, 236, that it need not be recapitulated here.

The question of the power of the States to enact pilotage laws and regulations as to waters within their respective limits would appear to have been foreclosed by the Supreme Court, and no longer open, yet the question was sought to be again opened in *Wilson vs. McNamee,* 102 U. S. 572 (12 Otto).

On the trial of this case the Court refused to hear argument from the defendant in error, who relied upon the above-cited former adjudication. The Court declared that the right of the States to adopt pilotage laws, subject to the limitations imposed by Congress, was too well settled by previous adjudications to be again disturbed, affirmed *Ex parte McNeil*, and cited with approval 2 Story, Const., Section 1071; *Gibbons vs. Ogden*, 9 Wheat. 1-207; *Atkins vs. Disintegrating Company*, 18 Wall. 272; *Cooley vs. Port Wardens of Philadelphia*, 12 How. 299, stating that those cases had been so elaborately considered in *Ex parte McNeil* as to render further consideration unnecessary.

As far as this State is concerned, the question was settled in *State ex rel. Williams vs. Livaudais*, decided in 1884, cited *ante*.

This Court has adhered to the doctrine of the above cases whenever the control and jurisdiction of the States over inland waters has been involved.

> *Martin vs. Waddell*, 16 Pet. 367; *Pollard vs. Hagan*, 3 Howard, 212; *Genesee Chief*, 12 How. 443; *Barney vs. Keokuk*, 94 U. S. 324; *Parker vs. Bird*, 137 U. S. 566; *Harden vs. Jordan*, 140 U. S. 371; *Gibson vs. United States*, 166 U. S. 269; *Cardwell vs. American Bridge Co.*, 113 U. S. 205; *St. Anthony Water Power Co. vs. Commissioners*, 168 U. S. 349; *Lake Shore Ry. Co. vs. Ohio*, 165 U. S. 365; *Wallamette Bridge Co. vs. Hatch*, 125 U. S. 1; *Navigation Co. vs. United States*, 148 U. S. 312.

We reach the question whether anything in the record of relator's conviction, as sent up from the trial Court, impeaches his conviction for an avowed violation of a criminal statute of this State that had been adjudged by the State Courts to be binding upon all citizens of the State, and all others while within the jurisdiction of the State.

Although Leech, in his petition to this Court, under oath, declares himself to be "*a resident of the City of New Orleans, State of Louisiana,*" and we are unable to find any claim of Mississippi citizenship or domicile in the record, he must have in some way impressed the Mississippi authorities with the belief that he was a citizen, or, at least, a resident, of that State, before they delivered him a lawbreaker's license to exploit with in Louisiana.

The presumption is that Leech is now posing as a citizen or resident of the State of Mississippi:

First. Because he attempts to avoid conviction by resorting to the laws of Mississippi (imported into this State by him for that purpose), and the acts of Mississippi officers alleged to be administering the laws of Mississippi, by uninvited invasion, to become operative in this State for his benefit to the extent of working the repeal of not only the statute under which he is convicted, but the entire pilotage laws of the State.

A citizen of this State, under our law, would not be permitted to assume this attitude or borrow Mississippi legislation.

SECOND. It cannot be assumed that the State of Mississippi would resort to the undignified trickery of attempting to destroy the pilotage system of Louisiana by knowingly appointing a citizen of the State of Louisiana as pilot at the mouth of the Mississippi River who, when so appointed, as believed, became relieved of any and all conditions, penalties, discipline and liabilities imposed on pilots by the laws of Louisiana, intending, by flooding our waters with Natchez pilots, to drive from our waters all of our pilots and fill their places by our own citizens, chosen by Mississippi, to work the destruction of our pilotage laws.

The abstract of the pilotage laws of this State set forth *ante* was given to show the degree of severity found necessary by our Legislature to give security to commerce in our inland waters.

If there is anything valid in the contention and attitude of Leech, the few regulations and penalties for misconduct, attempted to be incorporated in the Mississippi pilotage laws set up, could only be enforced by our citizens or the parties injured by going to Mississippi, where the offending pilot would be outside the jurisdiction of our Courts and not punishable by Mississippi Courts for offenses committed in Louisiana.

If there is anything in the Federal legislation that can warrant such invasion of our territory and dominion, such legislation is in repugnance to that provision of Section 9 of Article 1 of the Federal Constitution that prohibits both the States and Congress giving any

preference, by regulation of commerce, to one State or its ports over the ports of any other State.

The contention of Leech, if sustainable by the Courts, makes Louisiana and its citizens vassals of Natchez, so far as its pilotage laws or regulations of commerce are concerned. Congress could not lawfully adopt any such legislation; still less has the State of Mississippi such power.

It is contended that Congress did adopt such legislation in the Act of 1789, now Section 4235, United States Revised Statutes, adopted at the first Congress convened under the Constitution. The following is the exact text of that section of the Revised Statutes:

> "Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively enact for that purpose."

The motive for this legislation, as well as its effect and range, were fully considered in *Ex parte McNeil*, above cited.

The act will bear no construction that will permit any State to act beyond its own jurisdictional limits to either create or regulate pilots or pilotage, still less to repeal and set at naught the laws of a sister State by the extra-territorial operation of its own legislation.

The words used in the act, "*Wherein such pilots may be*," can only mean the State wherein such pilots and

their regulation are *made and operative as the local legislation of the State.* No other meaning could have been intended, unless it was intended to set the several States by the ears.

It seems impossible that Leech can find anything in the nature of defense against his conviction in the Act of 1789, or in the jurisprudence of this Court given *ante.*

From the character of the defense in the Court below, and his petition to this Court, Leech seems to believe that some construction can be given to the Act of 1837, by which the statute under which he is convicted, as well as all other prohibitions in the Louisiana pilotage laws, are repealed—at least as to Mississippi-made pilots.

The following is the text of the Act of 1837, now Section 4236, United States Revised Statutes:

> "The master of any vessel coming into or going out of any port situated upon waters that are the boundary between two States may employ any pilot licensed or authorized by the laws of either of the States bounded on such waters to pilot the vessel to or from such port."

This act can only be properly construed in connection with the circumstances and conditions that led to its enactment, not only well known as history, but illustrated in the reports of the courts of both New York and New Jersey.

The law was enacted to meet conditions and complications arising in the very waters involved in the controversy in *Gibbons vs. Ogden, ante.* New York City had become the great commercial port of the country. Jer-

sey City, in New Jersey, was then a city of little commercial importance, either in trade or commerce. The two cities are divided by the waters of New York Bay and the Hudson River, the state line being about midway between the two cities or ports. The course between the two ports is over the dividing water and at about right angles to the course of the dividing water.

Both States enacted pilotage laws, and created pilots. The New Jersey pilots, under their law, claimed the right to pilot vessels to the wharves of New York City. The New York pilots, under their then law, denied the right of New Jersey pilots to pilot any vessel bound to New York City.

If a New Jersey pilot boarded a vessel bound to New York City, the vessel was sure to be spoken by a New York pilot, and if his services were refused the Courts of New York awarded the New York pilot half or full pilotage for tendering his services. The same course was pursued in New Jersey Courts when a New Jersey pilot spoke a vessel bound to New York City and was refused, the New Jersey Courts enforcing the payment of money if the owner or master of the vessel could be found within the jurisdiction of New Jersey.

This condition became intolerable to vessels and vessel-owners. It became necessary for every master or owner so spoken to determine which pilot he was required to take, with the certainty of being taken into the Courts of one of the States at least, and compelled to litigate the validity of the laws of both States in order to defend

against double pilotage, or against the imposition of fines.

This condition became so intolerable that Congress was compelled, by the importunity of shipowners, to provide some relief for vessels. Congress found itself face to face with a difficulty that not only existed then, *but will exist while the Federal Constitution stands.*

That provision of Section 9 of Article 1 of the Federal Constitution which prohibits any preference in favor of the ports of one State *over the ports of another State* made it practically impossible for Congress to invade both of the States of New York and New Jersey, and establish a system of Federal pilotage for each of the States that would not be assailed as giving one State or its ports preference or advantage over the other. Congress adopted a policy by which it escaped the invasion of either of the States by enacting *a defense that was available to the master and shipowners* by furnishing the *master* an adequate plea in case of attack by the Courts of either of the States.

This Act of Congress applies to all other ports in the country situated, as the ports of New York and New Jersey are, on the waters of New York Bay, enabling the master of an incoming or outgoing vessel to take a pilot having a license from either of the States. This was done without any attempt to *repeal or modify a single section in the pilotage laws of either of the States by direct Congressional legislation,* leaving it to the States involved to settle their disputes in the Federal Supreme Court if they chose, that Court being open to both in its original jurisdiction.

This legislation of 1837 of course applies to all ports where conditions *are the same as in New York Harbor,* but such ports are rare in the United States.

The Federal District Courts, and in some instances the Circuit Courts, have attempted to extend the operation of this act to make it bear upon States when only coterminous upon the Delaware Bay, but the reasoning in the cases does not warrant the conclusion arrived at in the *nisi prius* or other Courts that have dealt with the question.

In adopting this Act of 1837 Congress well knew that it was treading on delicate ground, and dealt carefully with the *terms and words used to express its legislative intention.*

First, Congress limited the application of the statute to the *master of any vessel coming into or going out* of a port, the character and description of which is set out in the statute by a *carefully-framed description of the port,* and can only be construed to relate to ports of entry. A vessel entering a river simply as a refuge from stress of weather, or to await orders, *not intending to make any port of entry for the reception or discharge of cargo,* is clearly not included in the range of this act. To get under range of this act the vessel must be *coming into or going out of a port* (of entry) *situated upon waters which are the boundary line between two States* at the *point where the port is situated,* and it cannot be made by construction to cover or relate to ports situated on waters which, at the locality where the port is located, have *both*

banks or shores within the body and dominion of a single State, and where the river and its banks have no character and office of an *interstate boundary for hundreds of miles above the location of the port*, as is the case with the port of New Orleans.

We respectfully submit that this act will bear no other construction. So construed, it exactly meets the conditions in New York harbor, and other ports like situated, sought to be dealt with by Congress in the Act of 1837, and does no violation to, or with, the accepted meaning of the carefully-selected words used in framing the act.

If our opinion be correct, Louisiana and all States having complete jurisdiction of the *sea-end of rivers* situated within their boundaries are free from invasion by pilots or the pilotage laws of any of the up-stream States.

Our construction of the Act of 1837, if correct, removes all possibility of a repetition of the regrettable scheming of individuals, and regrettable apparent interference of one State with the internal affairs and dominion of another, disclosed in the record of the case at bar.

To give the Act of 1837 any other construction, or the construction contended for by the relator, is to convict Congress of the deliberate intention of not only discriminating against Louisiana, its laws, commerce and ports, but with the intention to foment clashes and quarrels between States of a character that, in the case of independent nations and States, could only end or be settled by treaty, war or servile submission.

None of the cases cited and relied on by plaintiff in error are pertinent or sustain his contention. *The Glenearne*, 7 F. R. 604, the only well-considered case cited, is against his contention, correctly construes the Act of 1837, and accurately defines the dominion of the States over their inland waterways. We quote from the opinion of the Court, showing facts involved and law applied:

> "Therefore, when the Glenearne was at Astoria, bound up the Columbia River, she was on pilotage ground subject to the laws of both Oregon and Washington, and might, so far, take a pilot from either, after declining the services of one from the other, without becoming liable for half pilotage to the latter. And, so far as the navigation of the Columbia River is concerned, this is a sufficient answer to the libellant's claim, independent of the fact that the Washington Territory pilot first offered his services. *But the Glenearne was then bound on a voyage to Portland, which involved the navigation of the Wallamet River for a distance of twelve miles. Upon this portion of the pilotage ground between Astoria and Portland this Act of Congress does not apply, and the Washington Territory pilot was not qualified to act. It follows that*, when the libellant offered his services to the Glenearne to conduct her over his pilotage ground—to wit, from Astoria to Portland, practically the head of navigation on the Wallamet River for seagoing vessels—there was no pilot on board to take charge from the mouth of such river to Portland, and so much of the voyage was actually made without a licensed pilot. If the libellant had offered his services at the mouth of the Wallamet River to pilot the vessel to Portland, there is no doubt but that he would be entitled to take charge, and, if refused, to claim half pilotage; and this is practically admitted. But the pilotage ground

between Astoria and Portland is not divided into parts or sections, and the compensation for pilot services upon or over it is not so much per mile, or in proportion to the distance navigated, but so much a foot, according to the draft of the vessel, be the distance more or less.

"When the libellant offered his services to the master of the Glenearne at Astoria he was on his pilotage ground, and thereby he became entitled to pilot the vessel, at least from the mouth of the Wallamet to Portland, or to receive half pilotage (two dollars a foot) therefor, if his offer was declined. The master was not bound to take the Washington Territory pilot, although he was the first to speak the vessel, but might in any case do so, if he chose, as far as the mouth of the Wallamet, for which service he was entitled to pilotage according to the law of the Territory. But, notwithstanding, he was bound to take the Oregon pilot over that portion of the voyage or pilotage ground within the limits of the State of Oregon, or pay him half pilotage on account of the offer and refusal. Between Astoria and Portland the Columbia and Wallamet rivers are a pilotage ground for the Oregon River pilots, but the pilotage ground of the Washington pilots stops at the mouth of the latter. By the employment of an Oregon pilot at Astoria the voyage between the two places may be made with one pilot and for one pilotage. But, if the master chooses to incur the expense of double pilotage, he may employ a Washington pilot from Astoria to the mouth of the Wallamet River, and an Oregon pilot from thence to Portland. *But he cannot evade the offer, or its effect, of the Oregon pilot to conduct his vessel over any part of his pilot ground within the exclusive jurisdiction of his State,* by employing a Washington pilot on the Columbia River to conduct him to the Wallamet, and from there accompany him to Portland.

"The libellant is entitled to recover the amount claimed, with legal interest and costs."

The extent and character of the dominion of Oregon over the waterways of the Wallamette River were fully and correctly defined in the *Wallamette Bridge case,* 125 U. S. 1, Justice Bradley being the organ of the Court and dealing with the case with his usual exhaustive research and detail.

The case of the *Clymene,* 9 Fed. Rep. 164 (on appeal to the Circuit Court, 12 Fed. Rep. 164), on its face does not relate to the special contention in this case; that is, the right of one of the States to send its pilots into the dominion and territory of another State and carry with them the laws of the invading State as far as pilotage is concerned.

The Louisiana Supreme Court dealt correctly with the *Clymene case* when cited in that Court, as shown in its printed opinion in the transcript. Although the District and Circuit Court in the *Clymer case* seems to have been under the impression that they could or must follow the construction given its pilot laws by the Pennsylvania Supreme Court in *Flannigan vs. Insurance Company,* 7 Barr, 306, cited by plaintiff in error, the Supreme Court of Louisiana has never given any such construction to its pilot laws.

The *Clymene case* does not attempt to deal with the inland waterways of Pennsylvania or any port or point where the water is not the boundary between States or where there is the same State jurisdiction on both banks of the Delaware River above the point where that river enters Delaware Bay.

Philadelphia as a port of entry is situated exactly as is the State of New York in relation to New Jersey, a relation that led to the adoption of the Act of 1837.

All the other District and Circuit Court cases cited by plaintiff in error relate to boundary waters between States, and not, as in this case, to strictly inland waterways of States. This is also true of the case cited from the Florida reports. When Georgia sends her pilots to Key West or Tampa, the question litigated here will be involved. When that occurs, the Act of 1837, we imagine, will be of little avail to the invading Georgia pilots. The same is true of the Kentucky case cited (55 Ky. 598, [1856]). We had supposed that the navigation of the Ohio River at that time and locality was regulated by the coastwise and inland navigation act of Congress, and cannot comprehend by what authority the Governor of Indiana assumed to appoint pilots to pilot river vessels navigating the Ohio. We had supposed the power to license such pilots was vested in the local inspectors provided for in the Act of 1852; but, whether the Governor had that power or not, the Ohio is boundary water between States, and the question here is not involved in that location.

Pilots, as far back as history records, have been considered indispensable adjuncts and servants of commerce, and as such highly esteemed and appreciated and protected by the governments and courts of all nations.

This Court, in *Ex parte McNeil,* 13 Wall. 238, did not

overdraw the hardships and hazards surrounding and incident to the lives and duties of pilots.

> "Pilots are a meritorious class, and the service in which they are engaged is of great importance to the public. It is frequently full of hardship, and sometimes of peril; night and day, in winter and summer, in tempest and calm, they must be present at their proper places and ready to perform the duties of their vocation. They are thus shut out for the time being from more lucrative pursuits and confined to a single field of employment."

They are entitled to all that law can give them in the way of stringent enactments and rules of conduct having the form of enforceable statutes and sufficient to protect them from suffering, insufficiency and mutiny from within their ranks as well as invasion and attacks from without, as attempted by Leech with his so-called Mississippi-pilot license.

We respectfully submit that, if this Court finds that it has jurisdiction to consider this cause under the present writ of error, there is no error to the prejudice of the plaintiff in error, and that he should take nothing by the writ.

Respectfully submitted,

WALTER GUION,
Attorney General.

N. H. NUNEZ,
District Attorney, Twenty-ninth Judicial District Court.
Counsel for Defendant in Error.

J. R. BECKWITH,

the grant of power to Congress in the Constitution of the United States. *Cooley* v. *Wardens of Philadelphia*, 12 How. 299.

The act of August 7, 1789, 1 Stat. 54, is not a grant of power to the States to pass pilot laws, but a legislative recognition that the power is concurrent in the States and the United States until exercised by the latter. *The Panama*, Fed. Cas. No. 10,702; *S. C.*, 1 Deady, 27.

The navigable waters of the former Territories of Orleans and Louisiana are public waterways of the Nation, subject to common use. Act of March 3, 1811, c. 46, 2 Stat. L. 666.

The provisions of a state law, regulating pilots and pilotage, which are in direct and manifest conflict with the act of March 2, 1837, concerning pilots, are inoperative and void. *The South Cambria*, 27 Fed. Rep. 525.

A pilot licensed by the State of Delaware is entitled to recover for services in piloting a vessel up the Delaware Bay and river to Philadelphia, notwithstanding a law of Pennsylvania prohibiting any one from acting as such pilot without a Pennsylvania license. *The Clymene*, 9 Fed. Rep. 164; *S. C.*, 12 Fed. Rep. 346.

The act of March 2, 1837, authorizing the master of a vessel bound to, or from, a port situate on waters which are the boundary between two States, to employ a pilot licensed by the laws of either State, applies to the laws of coterminous States situate upon a navigable river which is not a separating boundary between them. *The Clymene*, *supra*.

A statute of Louisiana purporting to give to that State absolute authority over the subject of pilots and pilotage on the Mississippi River to the exclusion of other States bordering thereon is inoperative and void for the reason that it conflicts with the act of March 2, 1837. *The Glenearne*, 7 Fed. Rep. 604; *The Clymene*, 9 Fed. Rep. 164; *S. C.* 12 Fed. Rep. 346; *The Chas. A. Sparks*, 16 Fed. Rep. 480; *The Abercorn*, 26 Fed. Rep. 877; *The South Cambria*, 27 Fed. Rep. 525; *The Alcalde*, 30 Fed. Rep. 133; *Dryden* v. *Commonwealth*, 55 Kentucky, 598; *Cribb* v. *State*, 9 Florida 409.

Mr. Walter Guion, Attorney General of the State of Louisiana, *Mr. J. R. Beckwith* and *Mr. N. H. Nunez* for defendant in error:

The act of March 2, 1837, does not apply to the case at bar, where the pilotage held to be unlawful was done upon waters wholly within the State of Louisiana and over which the State of Mississippi has no rights whatever. To come within the terms of the statute, the vessel must be coming into or going out of a port of entry situated upon waters which are the boundary line between two States at the point where the port is situated, and the statute cannot be made by construction to cover or relate to ports situated on waters which, at the locality where the port is located, have both banks or shores within the body and dominion of a single State. Cases cited by plaintiff in error discussed and distinguished.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an information charging the plaintiff in error with piloting a foreign vessel from the Gulf of Mexico to New Orleans, the port to which she was bound, he not being a duly qualified pilot under the laws of Louisiana. He was convicted after a trial, and the Supreme Court of the State pronounced the judgment correct. 119 Louisiana, 522. By demurrer, motion to quash and motion in arrest of judgment he raised the objection that the power of Louisiana was not exclusive, and that a license from the Board of Pilot Commissioners for the Harbor of Natchez, Mississippi, was a sufficient authority under the act of Congress of March 2, 1837, c. 22, 5 Stat. 153. Rev. Stat., § 4236.

The Mississippi River, it will be remembered, is a boundary between Mississippi and Louisiana from below the port of Natchez as far north as Louisiana extends. On the other hand, all the southernmost portion of the river is wholly within Louisiana. The destination of the vessel which the plaintiff in error undertook to pilot was to a point within this southernmost portion, New Orleans, as the information charged.

For the purposes of decision it may be assumed, although it is disputed, that the State of Mississippi has attempted to authorize the plaintiff in error to do what he did, while Louisiana has made his conduct criminal if it has power to do so under the United States law.

The section of the Revised Statutes reads as follows: "The master of any vessel coming into or going out of any port situate upon waters which are the boundary between two States, may employ any pilot duly licensed or authorized by the laws of either of the States bounded on such waters, to pilot the vessels to or from such port."

The case for the plaintiff in error depends upon the assumption that the "waters which are the boundary between two States" are, in this case, the whole Mississippi River so far as navigable. We are of opinion that the assumption is wrong, and that the limit of the waters referred to is the point at which they cease to be a boundary between two States. Neither continuity of water nor identity of name will carry them beyond that point. If the plaintiff in error had undertaken to pilot from the Gulf to Natchez, a different question would have been presented, and it may be that in that case the Mississippi license would have been good. But New Orleans, although upon the Mississippi, is not situate upon waters which are the boundary between two States, and therefore the section relied upon does not apply. That being out of the way, Louisiana had power to pass her local regulations. Rev. Stat., § 4235. Act of August 7, 1789, c. 9, § 4. 1 Stat. 54.

Judgment affirmed.

LEECH *v.* STATE OF LOUISIANA.

ERROR TO THE SUPREME COURT OF LOUISIANA.

No. 152. Submitted April 15, 1909.—Decided May 17, 1909.

The Mississippi river is a boundary between Mississippi and Louisiana from below the port of Natchez as far north as Louisiana extends; but below Natchez all the river is wholly within Louisiana, and that State, subject only to the paramount power of Congress, has exclusive jurisdiction over pilotage in the river between points south of Natchez.

Section 4236, Rev. Stat., act of March 2, 1837, c. 22, 5 Stat. 153, allowing the master of vessels coming in or going out of ports on boundary rivers to employ any pilot licensed by either State, does not apply to pilotage to ports on a river below the point where it becomes a boundary river; and a pilot licensed only by Mississippi has no right to pilot a vessel from the Gulf of Mexico to New Orleans.

Quære whether under § 4236 a pilot licensed only by Mississippi can pilot a vessel from the Gulf to Natchez.

Neither continuity of water nor identity of name will make a river a boundary river except where it flows between the States it separates for a part of its course; it ceases to be a boundary river wherever it is wholly within one State.

119 Louisiana, 522, affirmed.

THE facts are stated in the opinion.

Mr. George H. Terriberry for plaintiff in error:

A regulation of pilots is a regulation of commerce, within